

***United States Court of Appeals
for the Second Circuit***



JOINT APPENDIX

76-7590

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 76-7590

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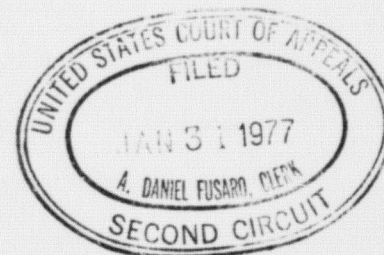
SEYMOUR LANDAU, and all others similarly
situated,

Plaintiff,

-against-

THE CHASE MANHATTAN BANK, N.A.,

Defendant.



ON APPEAL from the UNITED STATES DISTRICT COURT
for the SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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CIVIL DOCKET
UNITED STATES DISTRICT COURT

JUDGE DUFFY JUDGE TYLER

Jury demand date:
by plaintiff: 10-24-72

D. C. Form No. 156 Rev.

72 CIV. 4514

TITLE OF CASE

ATTORNEYS

SEYMOUR LANDAU and all others similarly
situated.

For plaintiff:

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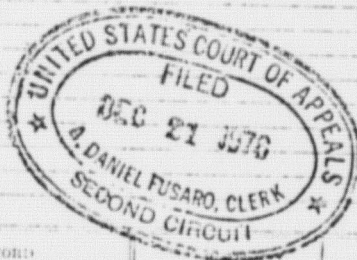
-v-

THE CHASE MANHATTAN BANK, N.A.

For defendant:

Milbank, Tweed, Hadley & McCloy
1 Chase Manhattan Plaza
N.Y.C. 10005 Tel: 422-2660

11/30



STATISTICAL RECORD

DATE	NAME OR RECEIPT NO.	REC.	DISC.
11/4/76	J. V. Burman	15	
11/27/76	1657		
J.S. 5 mailed	x		
J.S. 6 mailed	✓		
Basis of Action: branch of Contract National Bank Act. 12 USC 9a.			
Action arose at:			

Clerk

Marshal

Docket fee

Witness fees

Depositions

Handwritten initials and marks, including a large 'C' and 'N'.

JUDGE DUFFY

JUDGE TYLER
82 CIV. 4514

DATE	PROCEEDINGS	Date Order or Judgment Noted
Oct 24-72	Filed Complaint and issued summons.	
Nov 17-72	Filed Summons and entered Marshal's return served on Chase Manhattan Bank by Mr. Discant, Atty on 11-6-72.	
NOV 27/72	Filed Stip & Order. the time for debt to answer is extended from 11-27-72 to 12-15-72. TYLER, J.	
NOV 26-72	Filed plttf's notice of motion Re: Class Action ret. 12-6-72.	
NOV 28-72	Filed plttf's memorandum of law in support of motion Re: Class action.	
NOV 29-72	Filed MFC-BNL on motion dtd 11-26-72. This motion is respectfully referred to Judge Duffy with his consent. (sn) TYLER, J.	
Dec 6-72	Filed plttf's notice to produce to debt for copy and inspection.	
Dec 6-72	Filed plttf's demand for answers to interrogs.	
Dec 7-72	Filed Stip and Order that the return date of plttf's motion for a class action determination is adj'd from 12-6-72 to 12-22-72 and debt shall serve opposition papers by 12-18-72. TYLER, J.	
Dec 18-72	Filed debt's ANSWER to the complaint.	M, T, HGM
Jan 4-73	Filed debt's Answers to interrogs. of plttf.	
Jan 4-73	Filed debt's Response to notice to produce.	
Jan 4-73	Filed debt's Objections to interrogs. of plttf.	
Jan 11-73	Filed Stip and Order that the debt's time to serve opposition to plttf's motion for class action determination is extended from 12-18-72 to 1-15-73, that debt shall not serve any notice of motion for summary judgment before 1-15-73, that plttf shall have until 1-31-73 to serve papers in opposition to motion by debt for summary judgment, that the return date of plttf's motion for a class action determination is adj'd from 12-22-72 to 2-6-73, etc. DUFFY, J.	
Jan 16-73	Filed debt's notice of motion Re: summary judgment ret. 2-6-73.	
Jan 16-73	Filed debt's statement per to Gen. Rule 9G.	
Jan 16-73	Filed debt's memorandum of law in support of debt's motion for summary judgment.	
Jan 16-73	Filed debt's memorandum in oppsotion to plttf's motion for class determination.	
Jan 16-73	Filed debt's affdvt in opposition to motion for class action determination.	
Feb 15-73	Filed plttf's affdvt in opposition to motion for summary judgment of debt and in support of the cross motion by plttf for summary judgment.	
Feb 15-73	Filed plttf's memorandum of law in opposition to debt's motion for summary judgment and in support of plttf's cross-motion for partial summary judgment.	
Feb 15-73	Filed plttf's reply memorandum in support of its motion for class action determination.	
May 9-73	Filed debt's supplemental affdvt in reply to the affdvt of plttf dtd 4-26-73.	
Sep 28-73	Filed Opinion # 39870: By the terms of the agreement the bank may charge interest only on the amount of "Credit in use at the close of each day. If service charges are not amounts otherwise chargeable to the account" the bank is not authorized to include them as part of the "Credit In Use and consequently may not charge interest on them. On this issue, therefore, summary judgment must be entered for the plttf. Duffy, J. W/N Settle Order On Notice.	
Sep. 27-73	Filed plttf's supplemental affdvt in opposition to debt's motion for summary judgment.	

(CONT'D ON NEXT PAGE # 3)

(B)

CIVIL DOCKET

(PAGE # 3)

JUDGE DUFFY

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN ENCLOSURE RETURN
Nov. 8-73	Filed order that this action be maintained as a class action; that pltff's claim on compounding etc. is dismissed on the ground pltff. is without jurisdiction; that the class consists of all persons who have had cash reserve special checking accounts with the deft. as indicated; that a summary judgment is granted to pltff. in such amount as shall be found to be due him as damages; that the imposition of interest charges in connection with cash reserve special checking accounts is in violation as indicated and thereby illegal; that the deft. is enjoined and restrained from continuing to compute interest charges in the aforesaid illegal manner; that the deft. pay to pltff. and each member of the class a sum equal to the total interest charges as indicated; that deft. shall produce for inspection, review and copying by pltff's representative as indicated; that deft. on or before December 21, 1973 shall give notice of the pendency of this action as indicated; that notice given in the form and in accordance with the mailing provisions of paragraph (9); that all class members who wish to be excluded from the class shall send the form as indicated and the atty. for the deft. shall file such requests with the Clerk of the Court as indicated and the jurisdiction of this action is retained for the purpose of hearing applications as indicated. DUFFY, J. mailed notices.	
Dec. 28-73	Filed affdvt. of mailing of Frank J. Baker dated 12-28-73	
Jan. 3-74	Filed pltff's affdvt. of Sheldon V. Burman and notice of motion for an order to amend. Ret. 1-6-74.	
Jan. 3-74	Filed pltff's memorandum of law in support of motion to amend.	
Jan. 4-74	Filed deft's memorandum in opposition to motion to amend order.	
Jan. 10-74	Filed pltff's affdvt. of Sheldon V. Burman in reply to deft's answering papers.	
Jan. 10-74	Filed pltff's reply memorandum of law in support of motion to amend order.	
Jan. 30-74	Filed schedule for requests for exclusion...Vols 1 to 31 containing the requests received by Chase dtd. before 1-31-74...Request bearing no act.# are in vols 30 and 31	
June 14-74	Filed Opinion # 40825 and Order- the fact that the deft. has ceased charging interest on unpaid service and maintenance charges pursuant to the order of 11-9-73, obviously benefits the class even though damages have not yet been assessed. Fairness thus requires that the class as a whole share the burden of atty's fees. with the named pltff. Once damages are calculated as indicated. This part of the motion is therefore denied without prejudice to renewal once damages have been assessed. So ordered- DUFFY, J. (n/p)	

DATE	FILINGS- PROCEEDINGS	AMOUNT REPORTED IN SETTLEMENT JUDGMENT
June 19-74	Filed amended Order- that this action be maintained, etc. as a class action pursuant to Rule 23 (b) (3)- that plttf's claim on his own behalf and on behalf of a class based on compounding, i.e. charging " interest on interest" is dismissed as indicated- that the class consists of all persons as indicated- that summary judgment is granted to plttf as indicated- that the imposition of interest charges on check service charges and monthly maintenance charges , etc. as indicated and thereby illegal- that deft. is enjoined and restrained from continuing to compute interest charges as indicated- that deft. pay to plttf. and each member of the class as indicated- that deft. shall produce for inspection, etc. all appropriate books , etc as indicated- that deft. on or before 12-21-73 shall give notice of the pendency of this action as indicated- that notice given in the form and in accordance with the mailing provisions of paragraph (9) as indicated- that all class-members who wish to be excluded from the class shall send the form of request for exclusion as indicated- that the atty for the deft. shall file such requests with the Clerk of the Court as indicated- that jurisdiction of this action is retained for the purpose of hearing further applications as indicated. DUFFY, J. (mailed notice)	
July 9-74	Pre-trial conference held- DUFFY, J.	
Sep. 20-74	Pre-trial conference held- before DUFFY, J.	
Dec. 8-75	Filed Order referring matter to a magistrate for the purpose of conducting an inquest on the question of damages, etc. as indicated. BY ORDERED DUFFY, J m-	
04-26-76	Filed plttf's demand for answers to interrogs and notice to produce.	
05-03-76	Filed joint application for an order in the form annexed to the stip. of settlement as Exhibit A, setting a hearing for approval of the proposed settlement and directing notice to Class members. Per. 04-19-76	
5/20/76	Filed plttf's memorandum of law	
05-03-76	Filed order that a hearing for approval of proposed settlement shall be held on June 2, 1976***Duffy, J. m/n	
05-24-76	Filed deft's response to request for the production and inspection of documents.	
05-24-76	Filed deft's notice of intention to object to an allowance of atty's fees for atty. for plttf.	
05-24-76	Filed deft's objections to interrogs.	
05-24-76	Filed deft's answers to interrogs.	
06-01-76	Filed plttf's/notice of motion for an order to compel answers to interrogs and production of documents. Ret. 06-08-76	
06-01-76	Filed plttf's memorandum of law in support of motion to compel answers to certain interrogs. and the production of certain documents.	

(CONT'D - pg. #5)

(D)

(PAGE # 5)

(DUFFY, J.)

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Order or Judgment Noted
05-28-76	Filed deft's affdvt. of Norman E. Nelson re: proof of notice by publication.	
06-02-76	BEFORE DUFFY, J. Conference held and concluded.	
06-03-76	✓ Filed Judgment-- that the settlement embodied in the stip. of settlement dated 4-19-76 is fair, etc. and is approved--that the deft. is permanently enjoined and restrained from computing interest charges as indicated-- that this action and all claims alleged in the complaint, etc. are dismissed on the merits and with prejudice as indicated. DUFFY, J. Judgment entered 6-3-76 Clerk (m/n)	
06-07-76	Filed deft's affdvt. of Norman E. Nelson in opposition to motion to compel.	
06-07-76	Filed deft's memorandum in opposition to motion to compel.	
06-18-76	Filed memo endorsed on motion filed 6-1p 76.. Motion denied So ordered- DUFFY, J. (m/n)	
07-02-76	Filed plttf's affdvt. and notice of application for an order setting legal fees for counsel for plttf... Ret. 7-13-76	
07-02-76	Filed plttf's memorandum of law in support of application for award of legal fees.	
07-12-76	Filed deft's memorandum in opposition to plttf's counsel's application for legal fees.	
07-15-76	Filed plttf's reply memorandum of law in support of the legal fee application for plttf's counsel.	
07-19-76	Filed deft's memorandum in response to plttf's reply memorandum and in further opposition to plttf's counsel's application for legal fees.	
07-30-76	Filed deft's affdvt. of Frank H. Baker in compliance with paragraph 4 of stip of settlement.	
11-05-76	Filed Order: the application by the plttf's counsel for attys' fees is granted in the amount of \$12,500. It is so ordered DUFFY, J. (m/n)	
11-30-76	Filed plttf's notice of appeal to USCA from the memo endorsed with respect to motion filed 6-1-76 to compel deft. to answer interrogs relating to the legal fees, etc.. and the order with respect to plttf's application for counsel fees, which order was entered in or about 11-05-76. Copy to: Milbank, Tweed, Hadley & McCloy. Dnt. 11-30-76	
12-15-76	Filed letter dated Apr. 27-76 to Judge Duffy from deft. counsel.	
12-15-76	Filed letter dated Oct 9-75 to Judge Duffy from deft. Counsel.	
12-15-76	Filed letter dated Oct 15-73 to Duffy, J. from plttfs counsel.	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - X

SEYMOUR LANDAU and all others :
similarly situated, :

Plaintiff, :

-against- :

THE CHASE MANHATTAN BANK, N.A., :

Defendant. :

- - - - - X

OPINION and ORDER

72 Civ. 4514

APPEARANCES:

SHELDON V. BURMAN, ESQ.

Attorney for Plaintiff

MILBANK, THWEND, HADLEY & MCCLOY

By Isaac Shapiro, Esq.

Norman Nelson, Esq.

Of Counsel

Attorneys for Defendant

KEVIN THOMAS DUFFY, D. J.

This is a motion for a class action determination and cross-motions for summary judgment. Plaintiff sues on behalf of himself and all other holders of Chase Manhattan cash reserve checking accounts. Holders of such accounts may draw up to \$500 beyond their balance and repay it with interest in

twenty monthly installments, pursuant to a cash reserve credit agreement entered into between the holder of the account and the bank. Plaintiff alleges that the bank's method of computing interest on loans made pursuant to cash reserve credit agreements amounts to charging interest on interest and interest on check maintenance and service charges in violation of New York Banking Law §103(5) and the National Bank Act, 12 U.S.C. §§85, 86. Defendant maintains that its method of computing interest is in compliance with these laws.

Jurisdiction is properly invoked pursuant to 28 U.S.C. §1337 and 28 U.S.C. §1355. Section 1337 confers on the district courts "original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce ...". The National Bank Act clearly regulates commerce. Section 1355 confers exclusive jurisdiction "of any action or proceeding for the recovery or enforcement of any fine, penalty, or forfeiture... incurred under any Act of Congress." The plaintiff is suing for recovery of the penalty provided by Section 86 of the National Bank Act. In addition the state claims stem from a "common nucleus of operative fact", United Mine Workers v. Gibbs, 388 U.S. 715, 725 (1966), and thus meet the test for pendent jurisdiction.

I. Class Action

Before reaching the merits, it is necessary to determine whether this case should be maintained as a class action. Rule 23(a) Fed. R. Civ. P. sets out the four threshold requirements for a class action, at least three of which the plaintiff appears to have met. According to the defendant's records, the number of customers who may have paid what is alleged to be interest on interest was 1500 at the end of October, 1971, clearly a sufficiently large number to make joinder impractical. There are common questions of law and fact and the plaintiff's claims are typical of those of the class. The only dispute is whether the plaintiff can adequately protect the interests of the class. According to the defendant's uncontradicted affidavit, the plaintiff lacks standing to raise the claim that interest is charged on interest. Defendant argues that since this is the "predominating claim" in the complaint, the plaintiff is not an adequate representative of the class.

To evaluate this contention one must understand how the defendant calculates and charges interest for reserve checking accounts. When the customer uses part of the line credit provided, the bank lends the customer the amount of

the overdraft, up to an agreed maximum of five hundred dollars. Interest begins to run on this amount immediately at the rate of .0329 per cent a day, the equivalent of 12% per year. The year is divided into twelve billing cycles, and at the end of each cycle the customer receives a statement of account showing the principal amount owed, if any, with the interest accumulated during that cycle separately stated. Under the credit agreement the first installment of repayment is due within thirty days of the first monthly statement of account. During that thirty day period the interest accumulated during the previous cycle is not added onto the principal amount owing, but is held aside in the computer information system and listed separately on the second statement of account. By this time such interest should have been repaid, since the first installment is due and would have been applied first to interest and then to principal. If no installment has been paid, however, the interest from the first billing cycle is added to the principal amount and begins to collect interest.

According to the defendant, the plaintiff has always promptly repaid his overdrafts and avoided the situation

where interest could be charged on interest. Therefore, the defendant argues, he "does not possess the claim which he seeks to assert on behalf of the purported class."

This argument puts in question not only plaintiff's adequacy as a class representative, but also his standing to raise the issue of whether the defendant charges interest on interest. The Supreme Court has recently established that the prerequisites of standing to sue under a federal statute are (1) injury in fact and (2) an interest arguably within the zone of interests intended to be protected by the statute. Association of Data Processing Service Organizations v. Camp, 397 U.S. 150 (1970).

Plaintiff's case raises no problem as to the second prerequisite. It is clear that the National Bank Act was intended to protect borrowers from paying excess interest, as evidenced by its provision for double recovery to those who have paid such interest. 12 U.S.C. §86. Rather the crux of the problem is whether the plaintiff has shown the requisite injury in fact.

In approaching this question it is important to note that the plaintiff has demanded three forms of relief, i.e. damages, an injunction and a declaratory judgment. The

type of injury, whether past or future, which must be alleged to meet the test for standing naturally varies depending upon the type of relief sought. Here the complaint speaks in terms of past injury, and our analysis must therefore begin with the question whether the plaintiff has sufficiently shown past injury in fact to have standing to sue for damages.

The relevant allegations of the complaint state that:

"7. In connection with plaintiff's account, plaintiff received loans and/or advances from CHASE, made various payments in reduction thereof and had interest charges imposed against his account in the alleged unlawful manner, more particularly described below.

8. CHASE furnished plaintiff with monthly statements setting forth the details of the previous month's loans, payments and interest charges.

9. These monthly statements reveal that CHASE exacts interest charges not only on the "unpaid principal amount", required by statute, but rather on the unpaid principal plus accrued interest, check maintenance charges and check service charges."

Under the liberalized rules of pleading, these allegations would ordinarily be sufficient to meet the requirement of injury in fact. Standing is a threshold question which is normally resolved on the basis of the pleadings. See Environmental Defense Fund, Inc. v. Hardin, 428 F. 2d 1093, 1097 (D.C.Cir. 1970); Herpich v. Wallace, 430 F.2d 792 (5th Cir. 1970). However, when the allegations of the

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complaint upon which standing is based are flatly contradicted by a sworn affidavit, the district court must inquire further to ascertain whether, in fact, the plaintiff has standing. For if the plaintiff lacks standing, the court is without jurisdiction to proceed.

In Sierra Club v. Morton, 405 U.S. 727 (1972) the Supreme Court held that the plaintiff lacked standing because the complaint failed to allege injury to the Club or its members resulting from the development of Mineral King. Yet the Court implied that the deficiency in the complaint could have been rectified by an affidavit setting forth the injury to the plaintiff and/or its members. Specifically the Court stated that:

"Nowhere in the pleadings or affidavits did the Club state that its members use Mineral King for any purpose, much less that they use it in any way that would be significantly affected by the proposed actions of the respondents." 405 U.S. at 735.

Although the Sierra Club case does not provide much guidance to a court faced with a complaint contradicted by an opposing affidavit, it demonstrates the Court's awareness that an inquiry into the question of injury in fact need not end with the pleadings. See also Sissons v. Office of Selective Service of United States, 454 F.2d 279 (9th Cir. 1972).

On the record before this court, it does not appear that the plaintiff has in fact been injured by the defendant's alleged practice of charging interest on interest. In response to defendant's sworn statement that plaintiff has never been asked to pay such charges, plaintiff has submitted only a memorandum of law arguing that he need not prove such injury for the purposes of this motion. He cites cases to show that plaintiffs have been held to be adequate representatives of a class even where the facts of their case varied somewhat from those of other members. In none of those cases, however, was the court confronted with a sworn affidavit challenging the plaintiff's right to sue. In Marsay v. First Republic Corp. of America, 43 F.R.D. 465 (S.D.N.Y. 1968), for example, the defendant merely argued that the plaintiff would not be able to prove reliance or damages. Judge Metzner found this to be a possible variation in fact pattern but not a bar to class representation. In a suit for recovery of interest charged on interest, the failure to have sustained any such charge is not a mere variation in fact pattern, but strikes at the very essence of the claim. The plaintiff's failure to show injury in fact deprives him of standing to sue for the recovery of interest charged on interest.

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to make the required payment on time, and there is nothing in the papers submitted to suggest that the plaintiff will depart from his past practice of prompt payment. Mere speculative injury does not meet the test for standing. Merced Rosa v. Herrero, 423 F. 2d 591 (1st Cir.1970).

Standing to sue for a declaratory judgment requires the presence of a case or controversy no less than standing to sue for other forms of relief. Aetna Life Insurance Co. v. Haworth, 300 U.S. 227 (1937). Because of his failure to show past injury and his failure to allege future injury, the plaintiff's claim lacks the adversary quality necessary to satisfy the requirements of standing mandated by Article III of the Constitution.

Since the plaintiff lacks standing to raise the claim of illegal charges of interest on interest, this court lacks jurisdiction over the claim and it must therefore be dismissed.

There remain, of course, the questions of whether the defendant imposes illegal interest on service and maintenance charges and whether the effective rate of interest is in excess of 12%. No standing problem has been raised with regard to these questions, and the plaintiff appears to be an adequate representative of the class. These two claims

may therefore be maintained as a class action on behalf of all holders of Chase Manhattan cash reserve checking accounts.

More delicate is the question whether the action falls into category (b)(1), (b)(2) or (b)(3) of Rule 23 Fed.R.Civ.P. The differences between the categories are somewhat subtle, but it seems clear that subsection (b)(2) "does not extend to cases in which the appropriate final relief relates exclusively or predominantly to money damages." Notes of Advisory Committee on Rules, 39 F.R.D. 69, 102 (1966). Here the complaint speaks solely in terms of past injury and the court's jurisdiction is predicated partly on a statute relating to relief, 12 U.S.C. §86, which mentions only damages. Under these circumstances, while the court is not without equitable power to grant an injunction, money damages would be the predominant form of relief, and it would therefore be inappropriate to maintain the action under subsection (b)(2).

The plaintiff argues that the action should be maintained under subsection (b)(1)(A) which applies in cases where:

"The prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class." Rule 23(b)(1)(A) Fed. R. Civ. P.

The Notes of the Advisory Committee, supra, explain by way of example that the meaning of "inconsistent or varying adjudications" does not include the simple case where two individuals sue the same defendant for the same relief and one wins while the other loses. The meaning intended is rather that the same defendant might be sued by different plaintiffs asking for different and incompatible affirmative relief. Goldman v. First National Bank of Chicago, 56 F.R.D. 333 (D.R.I. 1969). In this case such a dilemma could only arise if another member of the class sued the defendant demanding that higher interest be charged. Of this there is no realistic likelihood.

Similarly, the meaning of subsection (b)(1)(B) is not as broad as it seems. This subsection applies where there is a risk of:

"adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;" Rule 23(b)(1)(B) Fed.R.Civ.P.

The Advisory Committee's Notes demonstrate that more than stare decisis is required to create the risk referred to in subsection (b)(1)(B). The examples used include situations where claims are made against a limited fund or where

the rights of novice exhibitors to compete within a limited area are adjudicated. A suit for damages for excessive interest such as the one at bar does not properly fall within this category. See Goldman v. First National Bank of Chicago, supra; Travers and Landers, The Consumer Class Action, 18 Kan.L.Rev. 811, 823-24 (1970).

This action will therefore be maintained under subsection (b)(3). The common questions clearly predominate over individual ones. Since every holder of a cash reserve checking account is subject to service and maintenance charges, the only individual questions will be how much interest has been imposed upon the service and maintenance charges of each customer. This could be calculated from the defendant's records and would not even require a trial. Notice to the class members as required by Rule 23(c)(2) will be directed by the Court based upon an order to be submitted by the parties.

II. Summary Judgment

Both sides have moved for summary judgment on the question of the legality of imposing interest on service and maintenance charges. The National Bank Act, 12 U.S.C. §85 permits a national bank to charge interest up to the maximum rate permitted by the laws of the state where it

is located. Here the applicable law is Section 108(5) of the New York Banking Law which provides that:

"5.(a) A bank or trust company which operates a personal loan department pursuant to paragraph (a) of subdivision four hereof may establish credits under written agreements with borrowers, pursuant to which one or more loans or advances to or for the account of a borrower may be made from time to time, by means of honoring one or more checks or other written orders or requests of the borrower and may charge interest on such loans and advances at the rate permitted by paragraph (b) of this subdivision, provided such loans and advances comply with the provisions of this subdivision."

The plaintiff argues that subsection (a) requires separate authorization for loans, other than the initial agreement entered into by the bank and the customer. Thus interest may be charged on amounts corresponding to the checks written by the plaintiff on his account but may not be charged on service and maintenance charges which are simply deducted from the account by the defendant. The defendant argues that such deductions are loans, no different from the deductions made when the plaintiff writes checks, and that since the bank is lending the plaintiff the amount of the service and maintenance charges it may exact interest on that amount. The written authorization, according to the defendant, comes from the agreement itself which provides

that:

"2. The Bank will from time to time advance the necessary funds for the Account, up to a total at any time outstanding equal to the Credit, to pay checks and other amounts for which there is an insufficient credit balance in the Account at the time but which are otherwise chargeable to the Account."

The defendant contends that service and maintenance charges may reasonably be characterized as "other amounts" which the plaintiff has thus agreed to have included in his credit.

This argument assumes, however, that such service and maintenance charges are "otherwise chargeable to the Account," an assumption which is rebutted by a close reading of Section 108(5)(e) of the statute.

Section 108(5)(e) provides in relevant part as follows:

"(e) The maximum rate of interest authorized by this subdivision shall be inclusive of all charges to the borrower incident to investigating and making any such loan or advance. No fee, commission, expense, or other charge to the borrower whatsoever in addition thereto shall be taken, received, reserved, or contracted for, except, if it is so provided in the agreement, (i) a service charge not in excess of twenty-five cents upon each such check or other written order or request; (ii) in case of default, in addition to interest, a fine in an amount not to exceed four cents per dollar of principal of any installment which has become due and remained unpaid for a period in excess of ten days, ..." (Emphasis added.)

It is in the light of this section that the Court must approach the question whether service and maintenance charges constitute "amounts otherwise chargeable to the Account."

Section 108(5)(e) forbids "charges to the borrower (other than interest charges) incident to ... making any such loan or advance." The first question therefore is whether service charges fall into this category. According to the affidavit of the defendant's vice president, the service charges imposed on special, as opposed to regular, checking accounts consist of a monthly charge of seventy-five cents plus ten cents per check. The plaintiff has paid these charges since 1957 when he opened his special checking account, although he did not enter into the cash reserve credit agreement until 1970. Between 1957 and 1970 then, the charges were not "incidental to ... making any such loan or advance", but since 1970 they have necessarily been incidental thereto, because they have been imposed on all checks used to draw such loans and advances. This court therefore concludes that the service charges on a special checking account, subject to a cash reserve credit agreement, are covered by Section 108(5)(e).

Section 108(5)(e) allows such charges to be imposed only "if it is so provided in the agreement". The agreement between plaintiff and defendant contains no reference to service charges of any kind, although it does contain an express provision for fines in case of default pursuant to Section 108(5)(e)(ii) quoted above. It could be argued that service charges are covered by the final clause of the agreement, which states in relevant part:

"This agreement is in addition to any other agreement, terms or conditions relating to the Account, all of which continue effective."

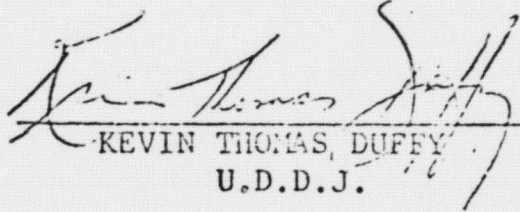
However, such incorporation by reference does not meet the express statutory requirement that the bank's intention to impose service charges be "provided in the agreement." Under Section 108(5)(e), therefore, the service charges do not constitute "amounts otherwise chargeable to the Account."

By the terms of the agreement the bank may charge interest only on the amount of "Credit in use at the close of each day." If service charges are not "amounts otherwise chargeable to the Account" the bank is not authorized to include them as part of the "Credit in use" and consequently may not charge interest on them. On this issue, therefore, summary judgment

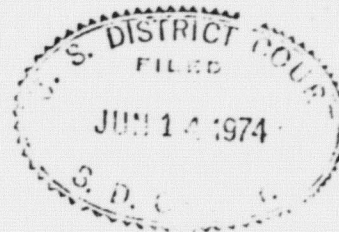
must be entered for the plaintiff.

Settle order on notice.

Dated: New York, N.Y.
September 28, 1973


— KEVIN THOMAS, DUFFY
U.D.D.J.

copy,



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SEYMOUR LANDAU and all others
similarly situated,

Plaintiff,

-against-

THE CHASE MANHATTAN BANK, N.A.,

Defendant.
-----X

#40825
OPINION AND ORDER
72 Civ. 4514

APPEARANCES:

SHELDON V. BURMAN, ESQ.
Attorney for Plaintiff

MILBANK, TWEED, HADLEY & McCLOY
Attorneys for Defendant
By Isaac Shapiro, Esq.
Norman Nelson, Esq.
Of Counsel

KEVIN THOMAS DUFFY, D.J.

Plaintiff brought this class action to recover the penalty authorized by the National Bank Act, 12 U.S.C. § 86, for the charging of usurious interest and to enjoin such charging of interest. Plaintiff and the other members of the class are holders of cash reserve checking accounts at the defendant Chase Manhattan Bank. The complaint alleged

that the defendant charged interest on interest and interest on service and maintenance charges in violation of the National Bank Act, 12 U.S.C. § 85, and the New York Banking Law § 108(5). On a motion for class action determination and cross motions for summary judgment, this Court filed an opinion holding that the claim for interest on interest must be dismissed for lack of standing but that the action could be maintained as a class action with respect to the claim for interest on service and maintenance charges and that the plaintiff was entitled to summary judgment on this claim.

Landau v. Chase Manhattan Bank, N.A., 367 F. Supp. 992

(S.D.N.Y. 1973). An order was entered November 9, 1973, in accordance with the opinion, certifying the action as a class action, directing that notice be sent, dismissing the claim for interest on interest, granting summary judgment to the plaintiff on the claim for interest on service and maintenance charges, establishing the measure of damages and ordering discovery to ascertain the amount owed to each class member. The order stated that the defendant had a right to appeal and that jurisdiction over the action would be retained for supervisory purposes. Notice was sent to the 65,894 members of the class on December 21, 1973. On January 3, 1974, plaintiff made this motion to amend the order of November 9, pursuant to Rule 60(b) and to have attorney's fees awarded pursuant to Rule 54(d). Fed. R. Civ. P.

In his Rule 60(b) motion, plaintiff seeks to amend the November 9 order in two ways: first, to clarify whether damages defined as interest on "check service charges" includes interest on monthly maintenance charges and second, to include certification of the entire question of the measure of damages to the Court of Appeals pursuant to 28 U.S.C. § 1292(b). Although plaintiff's motion has merit, Rule 60(b) on which he relies does not provide for the relief which he seeks, and a troublesome question thus arises as to how the Court should proceed.

Rule 60(b) authorizes a court to relieve a party from a final judgment under certain circumstances when justice will thus be served. Here, as the defendant correctly notes, the plaintiff is merely asking the Court to clarify an order, not seeking relief from a final judgment. Rule 60(b) is therefore inapposite. Rule 60(a) on the other hand allows a court to correct errors in judgments or orders "arising from oversight or omission . . . at any time of its own initiative or on the motion of any party." As a result of oversight, the opinion and order are somewhat ambiguous as to whether interest on monthly maintenance charges is to be included in the measure of damages, and the parties naturally differ as to the correct interpretation. The plaintiff points to language in the opinion

stating that "service charges imposed on special, as opposed to regular, checking accounts consist of a monthly charge of seventy-five cents plus ten cents per check." 367 F. Supp. at 999. The defendant cites statutory language forbidding only charges which are "incident to investigating and making any such loan or advance." New York Banking Law § 108(5)(e).

The opinion held that charges on checks used to draw loans or advances were necessarily incidental thereto. The defendant argues that monthly maintenance charges are imposed whether or not any loans or advances are drawn, and that therefore such charges cannot be incidental to making a loan or advance. However, this argument would apply equally to check service charges when the account is not in deficit. It is important to remember that the central issue in this case is whether the defendant may impose interest on such charges; thus as a practical matter the case concerns only those months when an account was in deficit as a result of the bank having made loans and advances. In such months the monthly maintenance charge would be "incident to . . . making any such loan or advance." New York Banking Law § 108(5)(e). Hence the interest imposed on monthly maintenance charges is necessarily included in the measure of damages and the order will be amended accordingly.

The second part of the Rule 60(b) motion requests certification of the question regarding the measure of damages to the Court of Appeals pursuant to 28 U.S.C. § 1292(b). Section 1292(b) provides that interlocutory orders may include such certification when they involve "a controlling question of law as to which there is substantial ground for difference of opinion." Its purpose is to expedite complex litigation by allowing interlocutory appeals in unusual circumstances. Milbert v. Bison Laboratories, Inc., 260 F.2d 431 (3d Cir. 1958); Bobolakis v. Compania Panamena Maritima San Gerassimo, 168 F. Supp. 236 (S.D.N.Y. 1958). It is an exception to the general rule that appeals may be taken only from final judgments or orders. Missouri v. Stupp Bros. Bridge & Iron Co., 249 F. Supp. 111 (W.D. Mo. 1966). It has no application to final orders which are appealable as of right under § 1291.^{1/} Johnston v. Cartwright, 355 F.2d 32 (8th Cir. 1966). The first point to be determined then is whether the order of November 9 was an interlocutory or a final order.

The courts have never arrived at a precise definition of the difference between final and interlocutory orders, but the Supreme Court has held that for the purposes of appeal "the requirement of finality is to be given a 'practical rather than a technical construction.'" Cohen v.

Beneficial Industrial Loan Corp.," [337 U.S. 541, 546 (1949),] Gillespie v. United States Steel Corp., 379 U.S. 148, 152 (1964). More specific guidance may be found in the language of Rule 54, Fed. R. Civ. P., which distinguishes between final "judgments" and interlocutory "decisions." According to Rule 54, a judgment is final if it disposes of all the claims raised; otherwise it does not terminate the action and is subject to revision at any time. This is also the criterion generally applied by the Second Circuit to determine finality for the purposes of appeal pursuant to 28 U.S.C. § 1291. Leopold v. Fitzgerald, 421 F.2d 838 (2d Cir. 1970); Borges v. Art Steel Co., 243 F.2d 350 (2d Cir. 1957); Audi Vision Inc. v. RCA Mfg. Co., 136 F.2d 621 (2d Cir. 1943). In the case at bar two claims were raised: one attacking the alleged imposition of interest on interest and the other challenging the imposition of interest on service and maintenance charges. Since the order of November 9 disposed of both of these claims it was a final and appealable order.

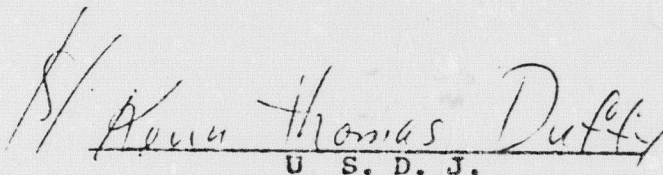
The fact that damages have not yet been calculated for the various class members does not alter this conclusion. In an analogous situation the Supreme Court found a decree directing the dissolution of a merger to be a final order even though no determination had been made as to how the

dissolution was to be effected. Brown Shoe Co. v. United States, 370 U.S. 294 (1962).^{2/} In holding that the decree had sufficient indicia of finality to be properly appealable, the Court emphasized that every prayer for relief had been passed upon. The order of November 9, likewise disposed of every prayer for relief, including the measure of damages.^{3/} The fact that the Court retained jurisdiction for supervisory purposes does not affect the finality of the order. Pioche Mines Consolidated v. Fidelity-Philadelphia Trust Co., 191 F.2d 399 (9th Cir. 1951). Since the order was final and appealable as of right under 28 U.S.C. § 1291, this Court has no power to treat it as an interlocutory order. Cf. Spencer, White & Prentiss, Inc. of Conn. v. Pfizer, Inc., No. 73-2310, 2d Cir., June 3, 1974. The motion to certify the question of the measure of damages to the Court of Appeals must therefore be denied.^{4/}

There remains the question of attorney's fees. Generally, attorney's fees will not be awarded by an American court as part of the costs of an action. Fleischmann Distilling Corp. v. Maier Brewing Co., 386 U.S. 714 (1967). However, under certain compelling circumstances the equitable power of the court may be used to award attorney's fees to the prevailing party. The two most classic examples of such circumstances are (1) where the defendant's conduct

has been in bad faith, vexatious or obstructive, 6 J. Moore, Federal Practice ¶ 54.77[2], at 1709 (2d ed. 1972); Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400, 402 n. 4 (1968), or (2) where the plaintiff's efforts in bringing and litigating the action have benefited a class. Hall v. Cole, 412 U.S. 1 (1973); Mills v. Electric Auto-Lite Co., 396 U.S. 375 (1970). No claim is made that the defendant in this case has acted in bad faith; rather the plaintiff claims to have benefited the class on whose behalf the action was brought. The fact that the defendant has ceased charging interest on unpaid service and maintenance charges pursuant to the order of November 9, 1973, obviously benefits the class even though damages have not yet been assessed. Fairness thus requires that the class as a whole share the burden of attorney's fees with the named plaintiff. Once damages are calculated there will be a common fund from which to pay attorney's fees. See Sprague v. Ticonic National Bank, 307 U.S. 161 (1939). At that time a determination may be made as to the proper amount to be awarded. This part of the motion is therefore denied without prejudice to renewal once damages have been assessed.

SO ORDERED.


U S. D. J.

Dated: New York, New York

June 14, 1974.

FOOTNOTES

9.

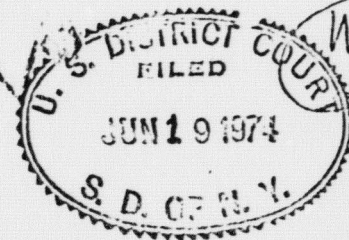
1/ In making a motion for certification pursuant to 28 U.S.C. § 1292(b) it is thus incongruous to rely on Rule 60(b) which by its terms is limited to relief from "a final judgment or proceeding." (Emphasis added). The word "final" was added in 1946 to emphasize "the character of the judgments, orders or proceedings from which rule 60(b) affords relief." Notes of Advisory Committee on Rules, 28 U.S.C.A. Rule 60, at 156 (West 1970).

2/ This case was before the Court on direct appeal pursuant to the Expediting Act, 49 U.S.C. § 45, but the Court indicated that the standards of finality to be applied were no different from those governing appeals pursuant to 28 U.S.C. § 1291. 370 U.S. at 306. See also United States v. American Society of Composers, Authors & Publishers, 317 F.2d 90 (2d Cir.), rev'd on other grounds, 375 U.S. 39 (1963).

FOOTNOTES continued

- 3/ The order of November 9 in this respect is thus distinguishable from the orders which were held to be non-appealable in Borges v. Art Steel Co., 243 F.2d 350 (2d Cir. 1957) and Russell v. Barnes Foundation, 136 F.2d 654 (3d Cir. 1943). In those cases a triable issue of fact remained as to the appropriate quantum of damages. Here nothing remains except a simple mathematical calculation.
- 4/ This Court considered the possibility of revising the order under the authority of Rule 60(b) to double the amount of damages in accordance with 12 U.S.C. § 86 and McCollum v. Hamilton National Bank, 303 U.S. 245 (1938). However, the law in this Circuit is clear that although Rule 60(b) allows a court to amend a judgment to include matter inadvertently omitted from the original order, Ivor B. Clark Co. v. Hogan, 296 F. Supp. 407 (S.D.N.Y. 1969), Rule 60(b) cannot be used as a substitute for appeal. Schildhaus v. Moe, 335 F.2d 529 (2d Cir. 1964); Wagner v. United States, 316 F.2d 871 (2d Cir. 1963). Since appeal would have been the proper remedy for the error claimed by the plaintiff, Rule 60(b) affords no relief.

(74)
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----x
:
SEYMOUR LANDAU and all others
similarly, situated, :

Plaintiff, :

-against- :

THE CHASE MANHATTAN BANK, N.A., :

Defendant.
-----x

AMENDED ORDER

72 Civ. 4514 RTD

MICROFILM
JUN 20 1974

Plaintiff having moved this Court for an order,
pursuant to Rule 23(c)(1) of the Federal Rules of Civil
Procedure and Civil Rule 11A of this Court, determining
that this action may be maintained as a class action; and

Defendant having moved for summary judgment pur-
suant to Rule 56 F.R.C.P.; and

Plaintiff having cross-moved for partial summary
judgment on the issue of liability pursuant to Rule
56 F.R.C.P.; and

Said motions having come on for hearing before
this Court on February 20, 1973; SHELDON V. BURMAN, ESQ.,
attorney for plaintiff, appearing on plaintiff's behalf,
and ISAAC SHAPIRO, ESQ. and NORMAN NELSON, ESQ., of counsel,
MILBANK, TWED, HAMMILL & McCLOY, appearing on defendant's
behalf; and

Shor 34

After due consideration and deliberation thereon, and upon the opinion herein, dated September 20, 1973, it is hereby:

(1) ORDERED that this action be maintained, and hereby is authorized to proceed, as a class action, pursuant to Rule 23(b)(3) F.R.C.P. with respect to the illegal acts set forth in paragraph (5) of this order; and it is further

(2) ORDERED that plaintiff's claim on his own behalf and on behalf of a class based on compounding, i.e., charging "interest on interest" is hereby dismissed on the ground that plaintiff lacks standing and this Court, therefore, is without jurisdiction; and it is further

(3) ORDERED that the class consists of all persons who have had cash reserve special checking accounts with the defendant, at any time from October 25, 1970, a date two years immediately preceding the commencement of this action on October 24, 1972, to September 28, 1973, against whom interest charges were imposed on special checking account check service charges; and it is further

(4) ORDERED that summary judgment be and the same is hereby granted to plaintiff in such amount as shall be found to be due him as damages and for such other relief as may be found just and proper; and it is further

(5) ORDERED that the imposition of interest charges on check service charges and monthly maintenance charges in connection with cash reserve special checking accounts is in violation of New York Banking Law, Section 102, subd. 5 and the National Bank Act (12 U.S.C. Sec. 85) and thereby illegal; and it is further

(6) ORDERED that defendant be and hereby is enjoined and restrained from continuing to compute interest charges in the aforesaid illegal manner or from collecting any interest charges so computed; and it is further

(7) ORDERED that defendant pay to plaintiff and each member of the class a sum equal to the total interest charges paid by each of them on check service charges and monthly maintenance charges from October 25, 1970 to September 28, 1973; and it is further

(8) ORDERED that defendant shall produce for inspection, review and copying by plaintiff's representative, all appropriate books, records and computer data relevant to ascertaining the damages sustained by each member of the class set forth in paragraph (3) of this order; and it is further

(9) ORDERED that defendant, on or before December 21, 1973, shall give notice of the pendency of this action substantially in the form annexed hereto as Appendix A by mailing a printed copy of such notice by first class mail,

postage prepaid, to every person who had a Chase cash reserve special checking account during the two year period preceding, or the eleven month period following, the filing of the complaint in this action, and whose name and address appear on the records which Chase is to make available to plaintiff pursuant to paragraph (8) of this order; defendant shall also mail, with such notice, a request for exclusion substantially in the form annexed hereto as Appendix B. No other communication of any kind concerning this action or the allegations in the complaint shall be sent by defendant or plaintiff or their attorneys to any person who has a checking account with defendant except with the express permission of this Court; and it is further

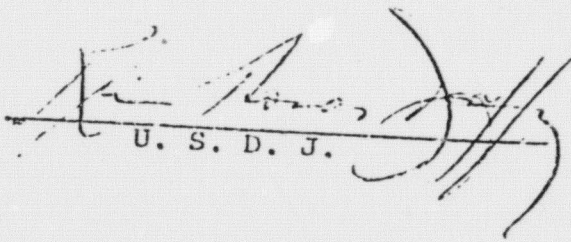
(10) ORDERED that notice given in the form and in accordance with the mailing provisions of paragraph (9) of this order is hereby found to be adequate and sufficient and shall constitute the notice required by Rule 23(c) of the Federal Rules of Civil Procedure; defendant shall file proof of mailing in conformity with paragraph (9) of this order with the Court on or before December 28, 1973; and it is further

(11) ORDERED that all class-members who wish to be excluded from the class shall send the form of

request for exclusion to the attorney for the defendant by January 11, 1974; and any class member who does not request such exclusion shall be included in the class; and it is further

(12) ORDERED that the attorney for the defendant shall file such requests with the Clerk of the Court, along with a schedule thereof, no later than January 25, 1974; and it is further

(13) ORDERED that jurisdiction of this action is retained for the purpose of hearing further applications and issuing additional orders as may become necessary or appropriate.


U. S. D. J.

Dated: New York, New York

June 10, 1974.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----x
SEYMOUR LANDAU and all others
similarly situated,

Plaintiffs,

-against-

THE CHASE MANHATTAN BANK,

Defendant.
-----x

: ORDER

: 72 Civ. 4514

KEVIN THOMAS DUFFY, D.J.

This matter is respectfully referred to a magistrate for the purpose of conducting an inquest on the question of damages. The damages are to be proven exactly with reference to the monthly statements of the members of the class.

SO ORDERED.


U. S. D. J.

Dated: New York, New York

DECEMBER

4, 1975.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

SEYMOUR LANDAU and all others
similarly situated,

Plaintiff,

-against-

THE CHASE MANHATTAN BANK, N.A.,

Defendant.

:

: 72 Civ. 4514 KTD

: DEMAND FOR ANSWERS TO
INTERROGATORIES AND
:NOTICE TO PRODUCE

:

:

- - - - -x

PLEASE TAKE NOTICE that plaintiff, pursuant to Rule 33 of the Federal Rules of Civil Practice, requests that defendant answer, under oath, the following interrogatories, and pursuant to Rule 34 of the Federal Rules of Civil Procedure, produce and permit plaintiff to inspect and to copy each of the following documents:

1. Set forth the total amount of legal fees paid to counsel for defendant to date. Annex copies of all billing statements received by defendant for which payment has been made.

2. Set forth the total amount of legal fees billed to defendant, but yet unpaid. Annex copies of all such billing statements.

3. Set forth the names, addresses and compensation paid to any and all experts employed by defendant in the defense of this action, including but not limited to, accountants, economists, statisticians, private investigators and all other persons retained by defendant in the defense of this action. Annex copies of all billing statements from such persons.

4. With respect to counsel for defendant, set forth the following information:

(a) The names of all attorneys, or para-professionals, if any, utilized by such counsel in the defense of this action.

(b) Whether such attorneys are partners or associates of defendant's counsel.

(c) For each such attorney, set forth his or her date of admission to the bar and a description of any published writings by them.

(d) The number of hours each such attorney has devoted to this litigation and the hourly rate of compensation attributable to such time, up to the date of the answers to these interrogatories.

(e) The number of hours and the hourly compensation for each and every para-professional, if any, employed by defendant's counsel.

5. Identify by date, preparer, number of pages and type of document, all studies, reports, financial statements, statistical analyses, intra-office memoranda, correspondence, or any other documentation of any kind whatsoever, relating to the economic effect of defendant's discontinuing the methods of computing finance charges on cash reserve special checking accounts, to wit, imposing finance charges on check service and maintenance charges; and compounding of finance charges, i.e., imposing "interest on interest." Annex copies of any and all such documents to the answers to these interrogatories.

Dated: New York, New York
April 19, 1975.

SHELDON V. DURIAN
Attorney for Plaintiff
21 East 48th Street
New York, New York 10016
(212) 685 7166

TO:

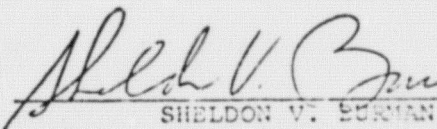
HILBANK, THOMP, HADLEY & McCLOY
Attorneys for Defendant
1 Chase Manhattan Plaza
New York, New York 10005

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SEYMOUR LANDAU and all others :
similarly situated, :
 :
Plaintiff, : 72 Civ. 4514 KTD
 :
-against- : JOINT APPLICATION
 :
THE CHASE MANHATTAN BANK, N.A., :
 :
Defendant. :
 :
-----X

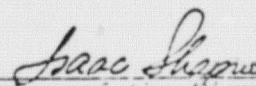
Upon the annexed stipulation of settlement dated April/9, 1976 and the exhibits annexed thereto, the undersigned attorneys for all of the parties herein will move this Court, before the Honorable Kevin T. Duffy, in Room 110, United States Courthouse, Foley Square, New York, N.Y., on April/9, 1976 at 10:00 A.M. or as soon thereafter as counsel can be heard for an order in the form annexed to the stipulation of settlement as Exhibit A, setting a hearing for approval of the proposed settlement and directing notice to Class members pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

Dated: New York, N.Y.
April/9, 1976


SHELDON V. BURMAN

21 East 40th Street
New York, N.Y. 10016
Attorney for Plaintiff

MILBANK, TWEED, HADLEY & McCLOY

By 
(A Member of the firm) *per* *MAN*
1 Chase Manhattan Plaza
New York, N.Y. 10005
Attorneys for Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
SEYMOUR LANDAU and all others :
similarly situated, :

Plaintiff, :

72 Civ. 4514 KTD

-against- :

STIPULATION
OF SETTLEMENT

THE CHASE MANHATTAN BANK, N.A., :

Defendant. :
-----x

WHEREAS, on October 24, 1972 plaintiff, Seymour Landau, commenced this action against The Chase Manhattan Bank, N.A. ("Chase"), alleging in essence that Chase had computed interest charges on loans and advances to customers with cash reserve special checking accounts in violation of Section 108(5) of the New York Banking Law and in violation of the National Bank Act (12 U.S.C. §§ 85, 86);

WHEREAS, on November 7, 1973 the Court entered an order in this action which, as later amended, among other things, (a) granted plaintiff's motion that this action be maintained as a class action pursuant to Fed.R.Civ.P. 23(b)(3) on behalf of a Class consisting of all persons who have had cash reserve special checking accounts with Chase at any time from October 25, 1970 to September 28, 1973 and against whom interest charges were imposed on special checking account check service charges, (b) granted plaintiff's motion for summary judgment with respect to the issue of imposing interest charges on check service charges and maintenance charges, (c) granted Chase's motion for summary judgment dismissing for lack of standing that portion of plaintiff's claim

which was based on compounding, i.e., imposing interest charges on interest charges, (d) enjoined Chase from continuing to compute interest charges on check service charges and maintenance charges in connection with cash reserve special checking accounts or from collecting any interest charges so computed, (e) directed Chase to give notice to the Class by first class mail and (f) retained jurisdiction for purposes of hearing further applications and issuing additional orders as became necessary or appropriate;

WHEREAS, Chase sent out 65,894 notices to Class members and received and filed with this Court approximately 5,000 requests for exclusion from the Class in accordance with the Court's order;

WHEREAS, various applications were made by the parties with respect to the measure of damages, the cost of computing damages and the appealability of the November 7, 1973 order;

WHEREAS, on December 4, 1975 the Court referred this action to a Magistrate for the purpose of conducting an inquest on the question of damages and ordered that damages be proven exactly with reference to the monthly statements of the members of the Class;

WHEREAS, the parties attended several conferences before the Magistrate at which the facts and circumstances concerning the proof required to establish damages in accordance with the Court's order of December 4, 1975 were investigated by the parties and estimates of the costs of ascertaining any actual individual damages to each member of the Class and the costs of distributing any such damages were presented and discussed;

WHEREAS, the expenses of proving and distributing any actual individual damages to each member of the Class would be substantially more than the amount of damages established by the Court's November 7, 1973 order, as amended, and many of these expenses, including the cost of examining approximately 2,100,000 monthly checking account statements, would be avoided pursuant to the distribution under the terms and conditions hereinafter set forth;

WHEREAS, the Class has been economically benefited by Chase's compliance with the November 7, 1973 order enjoining the collection of interest charges on check service charges and maintenance charges on cash reserve special checking accounts and by Chase's voluntary decision to cease collection of any interest charges on interest charges;

WHEREAS, as of April 1, 1976, 72,563 persons had cash reserve special checking accounts with Chase;

WHEREAS, plaintiff, by his counsel, has investigated the benefits that he and the members of the Class will receive pursuant to the terms hereinafter set forth in this stipulation of settlement and the uncertainties, hazards, burdens and delays involved in continuing this litigation and, on his own behalf and on behalf of the Class, considers it desirable and in the best interest of the Class to settle all claims asserted against Chase in the complaint herein in the matter and upon the terms and conditions hereinafter set forth;

WHEREAS, Chase considers it desirable and in its best interest to settle this action upon the terms and conditions hereinafter set forth in order to avoid further expenses, inconvenience

and distraction of burdensome and protracted litigation and to put to rest the claims asserted in the complaint;

NOW, THEREFORE, it is hereby stipulated and agreed by and between the undersigned attorneys, that, upon approval of this Court, after a hearing as provided for herein, this action be settled and compromised on the following terms and conditions:

1. Definitions.

As used herein the following terms shall have the meanings specified below:

(a) "Settlement Date" means (i) 31 days after the entry of an order and judgment approving this stipulation and dismissing this action with prejudice and on the merits, if no appeal therefrom be taken; or (ii) if such an appeal be taken, the date upon which such judgment and order are affirmed, or the appeal is dismissed, and the judgment and order are no longer subject to judicial review.

(b) "Distribution Date" means a date within 20 days after the Settlement Date, when Chase will post the credit hereinafter described to the accounts of persons who have cash reserve special checking accounts with Chase.

(c) The "Class" means all persons who have had cash reserve special checking accounts with Chase, at any time from October 25, 1970, a date two years immediately preceding the commencement of this action on October 24, 1972, to September 28, 1973, against whom interest charges were imposed on special checking account check service charges.

(d) "Authorized Recipient" means any person who shall have a cash reserve special checking account with Chase on the Distribution Date.

2. The Settlement.

(a) Chase agrees to credit thirty-five cents (35¢) to the cash reserve special checking account of each Authorized Recipient on the Distribution Date.

(b) Chase agrees to pay, subject to the approval of the Court, an attorney's fee to Sheldon V. Burman, Esq., attorney for plaintiff and the Class, in such amount as shall be allowed by the Court in order that the Authorized Recipients may obtain the aforesaid credit to their accounts without being required to contribute, as would be normal, a pro-rata share from the fund so created as attorney's fees and expenses.

(c) Chase agrees to refrain from computing interest charges on check service charges and maintenance charges in connection with cash reserve checking accounts and from collecting any interest charges so computed.

3. Order Providing For Notice and Hearing on Settlement.

(a) As soon as practicable after the date upon which this stipulation has been signed on behalf of the parties hereto, the parties shall submit this stipulation of settlement to the Court, together with the proposed order annexed hereto as Exhibit A.

(b) If the Court approves the order annexed hereto as Exhibit A, Chase agrees to pay the costs incurred in publishing the notice to the Class annexed to the order as Exhibit 1 in the New York Times and the New York News at least 20 days before the date of the hearing provided for in Exhibit A hereto.

4. Method of Distribution.

The identity of the Authorized Recipients shall be determined on the Distribution Date by means of a computer

program to be prepared at Chase's expense which will cause the aforesaid credit and an explanatory legend to be entered on the monthly statements of customers with cash reserve special checking accounts on the Distribution Date. Chase may, at its option and expense, distribute or enclose in the monthly statements of all or any of its customers a notice in substantially the form annexed hereto as Exhibit B. Within twenty days after the Distribution Date, Chase shall serve on plaintiff and file with this Court a certificate of compliance with this paragraph setting forth the number of accounts credited and annexing the form of notice, if any, distributed to customers.

5. Judgment to be Entered Upon Approval of the Settlement.

If the Court, after the hearing provided for in Exhibit A hereto, approves the terms of the settlement embodied in this stipulation, judgment shall be entered without further notice in the form annexed hereto as Exhibit C.

6. Effect of Disapproval.

If the Court does not approve this stipulation of settlement after the hearing provided for in Exhibit A, or if the Court approves this stipulation of settlement and judgment is entered thereon and an appeal is taken therefrom and, on appeal, the judgment is reversed or modified so as to change any of the terms of this stipulation, then this stipulation of settlement and all orders in connection therewith shall thereupon become null and void without further act of either party hereto.

7. Fees of Plaintiff's Attorney.

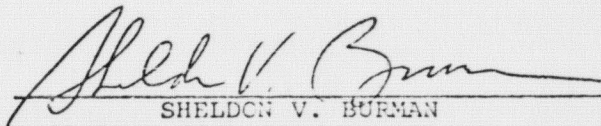
Upon the entry of an order fixing and approving the attorney's fees of counsel for the plaintiff and within seven days after the expiration of time to appeal for such order, or if an appeal is taken from such order, then within seven days

after such order is affirmed, or the appeal is dismissed, and the order is no longer subject to judicial review, Chase shall deliver to Sheldon V. Burman, Esq., a certified check payable to his order in such aggregate amount as shall have been awarded by the Court for attorney's fees of the plaintiff's attorney.


8. Non-Admissibility.

This stipulation of settlement is not and shall not be construed as an admission by Chase of any liability or wrongdoing arising out of or in connection with any claims which have been asserted in this action, or as an admission by plaintiff that this action is in any way without merit or that the relief requested is inappropriate. Neither the terms of this stipulation, nor any negotiations or proceedings concerning it, shall be offered or received in evidence nor shall they be admissible in evidence at any trial of this action or in connection with any motion relating to this action.

Dated: New York, N.Y.
April 9, 1976


SHELDON V. BURMAN
21 East 40th Street
New York, N.Y. 10016
Attorney for Plaintiff

MILBANK, TWEED, HADLEY & McCLOY

By 
(A Member of the Firm) *per*
1 Chase Manhattan Plaza
New York, N.Y. 10005
Attorneys for Defendant

MILBANK, TWEED, HADLEY & MCCLOY

1 CHASE MANHATTAN PLAZA

NEW YORK, N. Y. 10005

TELEPHONE 212 HANOVER 2-2660

TELEX 12-5595

I. T. T. 422962

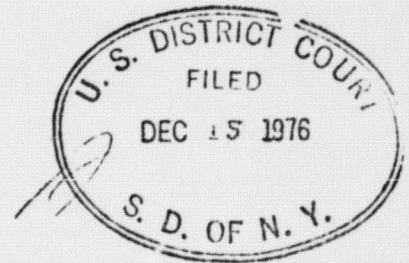
CABLE ADDRESS: MILTWEED NEW YORK

MIDTOWN OFFICE
120 AVENUE OF THE AMERICAS
NEW YORK, N. Y. 10036
212 HANOVER 2-2660

April 27, 1976

Re: Landau v. The Chase Manhattan Bank

Honorable Kevin T. Duffy
United States District Court
United States Courthouse
Room 618
Foley Square
New York, New York



Dear Judge Duffy:

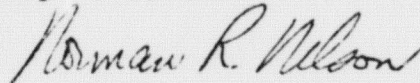
This letter is in response to your Honor's request that the parties explore the possibility of agreement concerning the amount of an attorney's fee to be paid to Mr. Sheldon V. Burman, attorney for plaintiff. As you are aware, no discussions of the amount of plaintiff's attorney's fee were had between the parties until after the stipulation of settlement was submitted. The stipulation of settlement provides for a credit of 35 cents to each special checking account. Although the exact amount of the fund created by the settlement cannot be precisely determined until the actual distribution is made, based on the number of

accounts as of April 1, 1976, the total recovery credited to the Class would be approximately \$25,000 ($72,563 \times .35 = \$25,396$).

We suggested to Mr. Burman that approximately \$7,500-\$8,500 would be an appropriate attorney's fee and that the maximum which we felt should be requested was \$10,000. Mr. Burman indicated that he felt this amount was inadequate, claiming that he had spent approximately 500 hours on this litigation. He did not inform us of the amount of the attorney's fee he intended to request until Monday, April 26, 1976. At that time he stated that he intended to apply for an attorney's fee of \$135,000.

Since we feel that this amount is entirely unjustifiable, we feel that the best way to proceed is to permit Mr. Burman to apply for such fee as he thinks is appropriate and for Chase to retain its right to oppose any application which it feels is excessive.

Very truly yours,



Norman R. Nelson

NRN:bh

cc: Sheldon V. Burman, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

SEYMOUR LANDAU and all others :
similarly situated, :

Plaintiff, :

-against- :

THE CHASE MANHATTAN BANK, N.A., : 72 Civ. 4514 KTD (

Defendant. :

- - - - -x

PLAINTIFF'S MEMORANDUM OF LAW
IN SUPPORT OF THE APPROVAL OF
THE SETTLEMENT OF THIS ACTION
AS FAIR, REASONABLE, ADEQUATE
AND PROPER.

Preliminary Statement

A hearing has been ordered for June 2, 1976 for the purpose of determining whether the settlement made between the parties is fair and reasonable or why plaintiff's counsel may or may not apply for an attorney's fee in the amount of \$135,000.00. Prior to such hearing it was ordered that notice to the class members be published at least twenty days before the hearing date in the New York Times and in the New York Daily News. Any objectants are

to submit papers or briefs no later than ten days before the hearing date.

Nature of Proceedings

The within proceeding is a class action commenced on behalf of plaintiff and all other similarly situated persons who have entered into cash reserve credit agreements with the Chase Manhattan Bank ("CHASE"). The complaint asserted the illegality of two practices of CHASE in connection with the computation of finance charges exacted from members of the class.

The two challenged practices are as follows:

1. The imposition of finance charges on check service charges of 10¢ per check and monthly maintenance charges of 75¢. The check service charge has increased to 15¢ per check.
2. Compounding of finance charges, i.e., charging "interest on interest."

The two practices were alleged to have violated the National Bank Act (12 U.S.C. Secs. 85, 86 and N.Y. Banking Law, Sec. 108(5)).

Subsequent to the commencement of the action a motion was made to certify the proceeding as appropriate for class

action relief pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure. By order dated November 7, 1973, the Court granted plaintiff's motion for class action certification on behalf of the class consisting of all persons who have had cash reserve special checking accounts with CHASE at any time from October 25, 1970 to September 28, 1973, and against whom interest charges were imposed in special checking account service and maintenance charges. As a result thereof, CHASE was directed to give notice to each and every member of the class by first class mail.

In compliance with the said direction for notice to the class members, CHASE sent out 65,894 notices, and received and filed with this Court approximately 5,000 requests for exclusion from the class in accordance with Rule 23(c)(2).

With respect to the merits, each of the parties made a motion for summary judgment. Plaintiff's motion was granted to the extent of declaring the practice of imposing interest charges on check service charges and maintenance charges, as illegal. Injunctive and monetary relief were also granted against CHASE. Defendant was enjoined from continuing to compute interest charges on check service and maintenance charges, or from collecting any interest charges so computed. CHASE was further required to pay

to each member of the class an amount equal to the actual individual damages sustained by use of such practice.

Defendant's motion for summary judgment was granted to the extent of dismissing, for lack of standing, that portion of plaintiff's claim which was based upon the compounding practice, inasmuch as the named plaintiff had not had such practice imposed against him. Although this claim of plaintiff was dismissed, CHASE has ceased the compounding practice and has not exacted interest from members of the class utilizing such practice, from in or about November, 1973.

Subsequent to the court's decision of November 7, 1973, there were various applications made by the parties relating to the cost, method of computing and measuring damages as well as related matters. These issues were explored via motions, conferences and pre-trial hearings.

The foregoing applications and conferences culminated in an order, dated December 4, 1975, referring this action to a Magistrate for the purpose of conducting an inquest on the question of damages which were to be computed exactly with reference to the monthly statements of members of the class.

The expenses of proving and distributing such

1
actual and individual damages to each member of the class, aside from other expenses incidental to the continuation of litigation, would be of a magnitude greatly in excess of the estimated total damages to members of the class.

Such a damage computation would entail the examination of more than 2,100,000 monthly checking account statements. From each of these monthly statements the amount of the check service charge and monthly maintenance charge would have to be ascertained. It would then be necessary to establish whether such charges were paid from the funds of the class members or advanced by CHASE. If the funds were advanced by CHASE, then a calculation of the interest for the period of the advance, without repayment, would have to be made.

This process would be further complicated because deposit entries and their effect upon the interest charge, could only be computed by comparing the statement for one month with the statement for the immediately preceding month. Such a comparison, however, would be unduly burdensome inasmuch as copies of such statements are stored on microfilm in numerical account number order by branch and by month. It has been estimated that the minimal costs associated with such a damage computation would approximate \$100,000.00.

On the other hand, estimates of the individual

actual damages to members of the class range from 12¢, for the named plaintiff, to an average of 15¢, based upon a random sampling presented to the Magistrate by CHASE. Using the 15¢ average individual actual damages and multiplying it by approximately 60,000 accounts, would only amount to \$9,000.00 in total damages to all of the class members. Even if the margin of error were high, it is obvious that such total damages are significantly lower than the costs of ascertaining such damages, without taking into account other litigation costs.

The Settlement Terms

The principal terms of the proposed settlement are as follows:

1. A credit of 35¢ shall be posted to the account of each and every cash reserve special checking account customer of CHASE on the distribution date, defined in paragraph 1(b) of the Settlement Agreement.
2. Counsel fees for the attorney for plaintiff and the class shall be payable by CHASE in such amount as approved by the Court.
3. A permanent injunction against CHASE shall restrain it from computing interest charges on check service

charges and monthly maintenance charges in connection with cash reserve special checking accounts or from collecting any interest charges so computed.

4. The present and future economic benefits to each of the class members shall not in any way be diminished because of the costs of this litigation or the award of counsel fees to the attorney for the plaintiff and the class.

Benefits of the Settlement

The settlement is advantageous to members of the class for many reasons, including the following:

1. The 35¢ credit is more than twice the estimated 15¢ actual individual damages which each of the class members may have sustained.

2. The 35¢ credit shall be given to more than approximately 72,000 class members who have accounts with CHASE on the distribution date, rather than the approximately 60,000 class members who had accounts during the period October 25, 1970 through September 28, 1973.

3. The manner of distribution precludes the necessity of expensive discovery costs approximating \$100,000, or for the members of the class to make extensive calculations

as to their own accounts, or to fill out any notice of claim forms to collect damages. An automatic credit will be given to each class member.

4. The attorney's fees for counsel to the plaintiff and the Class are payable by CHASE without any contribution whatsoever by members of the Class. Such fee arrangement is unusual as in virtually all class actions the counsel fee is payable by deductions from the benefits derived by class members.

5. The /injection against computation of interest on check service and maintenance charges, as well as CHASE's voluntarily discontinuing its compounding practice, shall result in substantial economic benefits to the class in the future.

6. The class members had derived substantial economic benefits from the date the above two challenged practices were discontinued, to wit, in or about November, 1973, to the date hereof.

7. Other hazards and burdens of further pursuing this litigation, as more particularly set forth below, as well as additional costs, are avoided.

POINT I

THE PROPOSED SETTLEMENT IS
EMINENTLY FAIR, REASONABLE
ADEQUATE AND PROPER AND SHOULD
BE APPROVED BY THIS COURT.

The philosophical basis for settlement of a class action, is identical to the purpose of settlement in any litigation, albeit the terms of the class action must be more carefully scrutinized. This underlying premise is based upon a general policy of the law to favor and encourage compromise and settlements rather than engage in protracted litigation. Williams v. First National Bank, 216 U.S. 584 (1901); Florida Trailer & Equipment Co. v. Deal, 284 F. 2d 567 (5th Cir. 1960).

In particular, the standards employed by the court in reviewing the propriety of proposed settlements of class actions, is whether the terms thereof are "fair and reasonable and in the best interests of all those who will be affected by it." Wright & Miller, Fed. Prac. & Proc. Sec. 1797, at 229; City of Detroit v. Grinnell Corp., 495 F. 2d 448 (2nd Cir. 1974); Zerkle v. Cleveland Cliffs Iron Co., 52 F.R.D. 151, 154 (S.D.N.Y. 1971).

In short, the ultimate test employed by the court is whether the settlement is in the best interests of the class. The primary factors in evaluating whether such criterion

has been met, are (1) the likelihood of success in pursuing the litigation, (2) the economic benefit proposed in settlement as compared to the amount that might be recovered, less litigation costs, if the action went forward, (3) the plan for distributing the settlement.

In the within action the likelihood of success of the litigation is not a factor, inasmuch as a summary judgment has been awarded to plaintiff on behalf of the class. Similarly, the class action questions are not relevant as a class action has been certified prior to the proposed settlement. It should be kept in mind, however, that a hazard of continuing this litigation, could be that the class action determination would be nullified by a decertification of the class. Indeed, CHASE has strongly urged the Court to modify its prior class action ruling to eliminate "the burdens imposed by paragraphs (7) and (8) of the Order of November 7, 1973," on the grounds that it would be "impractical and would constitute a waste of judicial time and effort" to pursue monetary relief.

The two decretal paragraphs referred to in the preceding paragraph, are as follows:

"(7) ORDERED, that defendant pay to plaintiff and each member of the class a sum equal to the total interest charges paid by each of them on check service charges from October 25, 1970 to September 28, 1973; and it is further

(8) ORDERED, that defendant shall produce for inspection, review and copying by plaintiffs representative, all appropriate books, records and computer data relevant to ascertaining the damages sustained by each member of the class set forth in paragraph (3) of this Order;"

In support of its position, CHASE has cited the well-known case of In Re Hotel Telephone Charges, 1974-2 Trade Cases, para. 75, 145. The trial court has not granted the request at this point in the litigation. However, if CHASE were compelled to spend \$100,000.00 in discovery costs, it seems probable that any such Order would be appealed by the bank.

The settlement, therefore, recognizes this difficulty in prosecuting the action by both sides.

Further hazards of prosecuting this litigation, rather than approving this settlement, include a possible imposition of the costs of discovering actual individual damages of members of the class from the class members. Additionally, the class members might also be burdened with the legal fee for the attorney for the class, rather than such fee being paid by CHASE, as agreed to by CHASE in the within proposed settlement.

Inasmuch as the best estimates of the average damages sustained by members of the class as a result of the use of

the illegal practice approximate 15¢ per class member, the settlement figure of 35¢ is quite generous. This is particularly so in view of the Court's ruling that only actual damages, rather than twice the damages, should be the measure of recovery.

It should be noted on this Point, that one could interpret the subject statute, to wit, 12 U.S.C. Sec. 85,86, as mandating not only the payment of twice the actual damages, but twice the total finance charges imposed. The likelihood of such an interpretation, however, appears remote. Courts have been loath to award penalty damages bearing no reasonable relationship to actual damages. In the landmark case of Ratner v. Chemical Bank, 329 F.S. 270 (S.D.N.Y. 1971), the award of penalty damages was found to be a "horrendous, possible annihilating punishment." The progeny of Ratner are many. Rogers v. Coburn Finance Corp., 53 F.R.D. 182 (N.D. Ga. 1971); Buford v. American Financial Corp., 333 F.S. 12 43 (N.D. Ga. 1971); Kruger v. European Health Spa, 56 F.R.D. 104 (E.D.Wis. 1972); Wilcox v. Commerce Bank, 55 F.R.D. 134, aff'd. ___ F.2d ___ (10th Cir. 1973).

It is clear from the foregoing analysis that the settlement amount of 35¢ per class member is an excellent recovery under the circumstances, particularly so because of the counsel fees for the plaintiff and the class being paid for by CHASE, as

well as all costs of giving notice to the class.

Moreover, the plan for distributing the settlement is the most efficient and economical means of carrying out the settlement, as it maximizes the financial benefit to class members. Settlements of this type, i.e., computation of a gross recovery amount and distribution to current members of the class, are well-recognized. In Re Antibiotic Antitrust Actions, 333 F.S. 273, 282-283 and 289 (S.D.N.Y. 1971), mand. den. 449 F. 2d 119 (2d Cir. 1971); West Virginia v. Charles Pfizer, 440 F.2d 1079, 1090 (2d Cir. 1971); cert. den., 404, U.S. 871 (1971); Esar v. Yellow Cab Co., 67 Cal. 2d 695, 433 P.2d 732 (1967).

In a non-settlement situation, the so-called "fluid recovery" recognized for settlement purposes, is still an open question which has support on both sides of the issue. In the well-known case of Eisen v. Carlisle and Jacqueline, 479 F. 2d 105, (2d Cir. 1973), commonly known as Eisen III, the fluid recovery was specifically deemed improper. The precedential value of Eisen III on this point, however, was negated in Eisen IV, 417 U.S. 156, 172 (1974), where the U.S. Supreme Court expressly noted that it was not stating its views on the propriety of the "fluid" recovery under federal Rule 23.

A further requirement of a proposed settlement is that the negotiation, were conducted in good faith and upon arms-length bargaining between the parties. Schleiff v. Chesapeake & Ohio Railroad, 43 F.R.D. 175, 181 (S.D.N.Y. 1967). The within action was settled with the skillful guidance of this Court and with full knowledge by the Court of the varying settlement positions of the parties. Moreover, the stipulation of settlement was agreed to and executed on behalf of the parties without any discussion whatsoever as to the amount of the legal fee to counsel for plaintiff. It was merely agreed, as a matter of principle, that CHASE would bear the fee in such amount as approved by the Court. The scrupulous avoidance of any discussion as to the amount of the legal fee was followed so as to wholly dismiss any possible claims of conflict of interest in the settlement negotiations or in the terms of settlement agreed upon.

Conclusion

For all of the foregoing reasons, the proposed settlement is fair, reasonable, adequate and proper and is clearly in the best interests of the members of the class, and should be approved by this Court.

Respectfully submitted,

Dated: New York, N.Y.
May 14, 1976.

SHELDON V. BURMAN
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
SEYMOUR LANDAU and all others :
similarly situated, :

Plaintiff, :

72 Civ. 4514 KTD

-against- :

ORDER

THE CHASE MANHATTAN BANK, N.A., :

Defendant :

-----x
A joint application having been presented to this Court
on April ¹⁹, 1976 for leave to settle this action upon the terms
set forth in a stipulation of settlement dated April ¹⁹, 1976 and
the Court being fully advised; it is hereby

(1) ORDERED that a hearing for approval of the pro-
posed settlement shall be held before the undersigned Judge of
this Court on ^{JUNE} ~~April~~ 2, 1976 at 10:00 A.M. in Room ⁹⁰⁶ ~~100~~ of the
United States Courthouse, Foley Square, New York, N.Y. 10007; and

(2) ORDERED that the notice of the said hearing shall
be given by defendant to all members of the Class established in
this Court's order of November 7, 1973 by publishing the notice
annexed hereto as Exhibit 1, at least 20 days before the hearing
date, in the New York Times and in the New York News. Notice by
publication in accordance with this paragraph is hereby found to
be adequate and sufficient pursuant to, and shall constitute the
notice required by, Rule 23(e) of the Federal Rules of Civil
Procedure and Rule 11B of the Civil Rules of this Court. Chase
shall file proof of such notice by publication on or prior to the
date of the hearing for approval of the proposed settlement;

(3) ORDERED that any member of the Class who so desires may appear at the hearing for approval of the proposed settlement and present any evidence that may be proper and relevant to the issues to be heard as to why the settlement should or should not be approved as fair, reasonable, adequate and proper, and why the action should or should not be dismissed on the merits, with prejudice and without costs, or why plaintiff's counsel may or may not apply for attorney's fees in the amount of \$ 135,000⁰⁰ provided, however, that no person not a party to the stipulation of settlement shall be heard and no papers or briefs submitted by any such person shall be received or considered by the Court (unless the Court in its discretion shall otherwise direct) unless at least 10 days before the hearing date notice of intention to appear and copies of such papers and briefs proposed to be submitted at the hearing shall be filed with the Clerk of this Court and served upon the attorney for plaintiff and the Class, Sheldon V. Burman, Esq., 21 East 40th Street, New York, N.Y. 10016, and the attorneys for defendant, Milbank, Tweed, Hadley & McCloy, 1 Chase Manhattan Plaza, New York, N.Y. 10005;

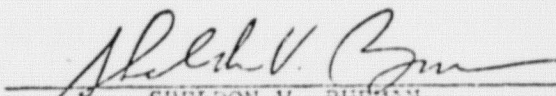
(4) ORDERED that in the event this Court approves the proposed settlement after the hearing provided for herein, any application by the attorney for plaintiff for the allowance of attorney's fees shall be filed after judgment is entered in accordance with the stipulation of settlement and this Court shall thereafter fix a date for hearing on such application;

(5) ORDERED that the Court shall retain jurisdiction over the hearing upon, and consummation of, the proposed settlement and the award to plaintiff and his counsel of a reasonable attorney's fee.

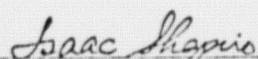
sf Kevin Thomas Duffy
U.S.D.J.

Dated: New York, N.Y.
April 30, 1976

Consent is hereby given to the entry of the foregoing
order without further notice.


SHELDON V. BURMAN
21 East 40th Street
New York, N.Y. 10016
Attorney for Plaintiff

MILBANK, TWEED, HADLEY & MCCLOY

By 
(A Member of the Firm) *MINN*
1 Chase Manhattan Plaza
New York, N.Y. 10005
Attorneys for Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
SEYMOUR LANDAU and all others :
similarly situated, :
 : 72 Civ. 4514 KTD
Plaintiff, :
 : RESPONSE TO REQUEST
-against- : FOR THE PRODUCTION
 : AND INSPECTION OF
THE CHASE MANHATTAN BANK, N.A., : DOCUMENTS
 :
Defendant. :
-----x

Pursuant to Rule 34(b) of the Federal Rules of Civil Procedure, defendant, by its attorneys Milbank, Tweed, Hadley & McCloy, responds to plaintiff's demand for answers to interrogatories and notice to produce as follows:

1. Defendant objects to the production of documents called for in paragraphs 1 and 2 on the grounds that such documents are subject to the attorney-client privilege and are not relevant to any issue in this action or reasonably calculated to lead to the discovery of admissible evidence.
2. Defendant has caused a diligent search to be made and finds no documents responsive to paragraph 3.
3. Defendant has caused a diligent search to be made and finds no documents responsive to paragraph 5.

Dated: New York, N.Y.
May 24, 1976

Yours, etc.,

MILBANK, TWEED, HADLEY & MCCLOY

By

Norman R. Nelson

(Of Counsel)

1 Chase Manhattan Plaza
New York, N.Y. 10005
Attorneys for Defendant

TO: SHELDON V. BURMAN, ESQ.
21 East 40th Street
New York, N.Y. 10016
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
SEYMOUR LANDAU and all others :
similarly situated, :
 :
Plaintiff, : 72 Civ. 4515 KTD
 :
-against- : NOTICE OF INTENTION
 : TO OBJECT
THE CHASE MANHATTAN BANK, N.A., :
 :
Defendant. :
 :
-----x

PLEASE TAKE NOTICE that defendant The Chase Manhattan Bank, N.A., at the hearing on the application for attorneys fees to be scheduled by this Court, reserves its right to object to an allowance of attorney's fees to the attorney for plaintiff, Sheldon V. Burman, Esq., 21 East 40th Street, New York, New York 10016, in any amount which defendant considers excessive or unreasonable.

Dated: New York, N.Y.
May 24, 1976

MILBANK, TWEED, HADLEY & McCLOY

By *Roman R. Nelson*
(Of Counsel)
1 Chase Manhattan Plaza
New York, N.Y. 10005
Attorneys for Defendant

TO: SHELDON V. BURMAN, ESQ.
21 East 40th Street
New York, N.Y. 10016
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SEYMOUR LANDAU and all others :
similarly situated, :
 :
Plaintiff, : 72 Civ. 4514 KTD
 :
-against- :
 :
THE CHASE MANHATTAN BANK, N.A., :
 :
Defendant. :
 :
-----X

Pursuant to Rule 33(a) of the Federal Rules of Civil Procedure, defendant, by its attorneys Milbank, Tweed, Hadley & McCloy, objects to plaintiff's demand for answers to interrogatories and notice to produce as follows:

1. Defendant objects to Interrogatories 1, 2 and 4 on the grounds that the information sought is subject to the attorney-client privilege and is not relevant to any issue in this action or reasonably calculated to lead to the discovery of admissible evidence.

Dated: New York, N.Y.
May 24, 1976

Yours, etc.,

MILBANK, TWEED, HADLEY & McCLOY

By Norman R. Nelson
(Of Counsel)
1 Chase Manhattan Plaza
New York, N.Y. 10005
Attorneys for Defendant

TO: SHELDON V. BURMAN, ESQ.
21 East 40th Street
New York, N.Y. 10016
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
SEYMOUR LANDAU and all others :
similarly situated, : 72 Civ. 4514 (KTD)
 :
Plaintiff, :
 :
-against- : ANSWERS TO
 : INTERROGATORIES
 :
THE CHASE MANHATTAN BANK, N.A., :
 :
Defendant. :
-----x

Pursuant to Rule 33(a) of the Federal Rules of Civil Procedure, defendant, by its attorneys Milbank, Tweed, Hadley & McCloy, answers plaintiff's demand for answers to interrogatories and notice to produce as follows:

Interrogatory No. 1:

Set forth the total amount of legal fees paid to counsel for defendant to date. Annex copies of all billing statements received by defendant for which payment has been made.

Answer to Interrogatory No. 1:

See defendant's objections to interrogatories.

Interrogatory No. 2:

Set forth the total amount of legal fees billed to defendant, but yet unpaid. Annex copies of all such billing statements.

Answer to Interrogatory No. 2:

See defendant's objections to interrogatories.

Interrogatory No. 3:

Set forth the names, addresses and compensation paid to any and all experts employed by defendant in the defense of this

action, including but not limited to, accountants, economists, statisticians, private investigators and all other persons retained by defendant in the defense of this action. Annex copies of all billing statements from such persons.

Answer to Interrogatory No. 3:

No experts were employed by defendant for the defense of this action.

Interrogatory No. 4

With respect to counsel for defendant, set forth the following information:

(a) The names of all attorneys, or para-professionals, if any, utilized by such counsel in the defense of this action.

(b) Whether such attorneys are partners or associates of defendant's counsel.

(c) For each such attorney, set forth his or her date of admission to the Bar and a description of any published writings by them.

(d) The number of hours each such attorney has devoted to this litigation and the hourly rate of compensation attributable to such time, up to the date of the answers to these interrogatories.

(e) The number of hours and the hourly compensation for each and every para-professional, if any, employed by defendant's counsel.

Answer to Interrogatory No. 4:

See defendant's objections to interrogatories.

Interrogatory No. 5:

Identify by date, preparer, number of pages and type of document, all studies, reports, financial statements, statistical

analyses, intra-office memoranda, correspondence, or any other documentation of any kind whatsoever, relating to the economic effect of defendant's discontinuing two methods of computing finance charges on cash reserve special checking accounts, to wit, imposing finance charges on check service and maintenance charges; and compounding of finance charges, i.e., imposing "interest on interest." Annex copies of any and all such documents to the answers to these interrogatories.

Answer to Interrogatory No. 5:

Defendant has no documents of the kind specified.

Dated: New York, New York
May 24, 1976

Yours, etc.,

MILBANK, TWEED, HADLEY & McCLOY
1 Chase Manhattan Plaza
New York, New York 10005
Attorneys for Defendant

TO: SHELDON V. BURMAN, ESQ.
21 East 40th Street
New York, New York
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

SEYMOUR LANDAU and all others :
similarly situated, :

Plaintiff,

-against-

THE CHASE MANHATTAN BANK, N.A., :

Defendant. :

: 72 Civ. 4514 KTL

: NOTICE OF MOTION

: ORAL ARGUMENT

: IS REQUESTED

- - - - -x

S I R :

PLEASE TAKE NOTICE, that upon the affidavit of SHELLON V. BURMAN, ESQ., sworn to May 28, 1976, plaintiff's demand for answers to interrogatories and notice to produce, dated April 19 1976, the responses, answers and objections of defendant thereto, and upon all the papers and proceedings heretofore had herein, the undersigned will move this Court before the Hon. Kevin T. Luffy, Jr. Room 906, located at 40 Centre Street, County, City and State of New York, on the 12 day of June, 1976, at 2:15 o' clock in the afternoon of that day, or as soon thereafter as counsel may be heard for an order, pursuant to Rule 37 of the Federal Rules of Civil Procedure, compelling defendant to answer interrogatories 1, 2 and 4 and to provide the relevant documents related thereto, and for such other and further relief as to this Court may seem just

and proper.

Dated: New York, New York
May 28, 1976.

SHELDON V. BURMAN
Attorney for Plaintiff
Office and P.O. Address
21 East 40th Street
New York, New York 10016

TO:

MILBANK, TWEED, HADLEY & McCLOY
Attorneys for Defendant
Office and P.O. Address
1 Chase Manhattan Plaza
New York, New York 10005

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
SEYMOUR LANDAU and all others
similarly situated,

Plaintiff,

-against-

THE CHASE MANHATTAN BANK, N.A.,

Defendant.

:
:
:
72 Civ. 4514 KTD

:
:
:
SUPPORTING AFFIDAVIT

-----x
STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

SHELDON V. BURMAN, being duly sworn, deposes and
says:

1. I am the attorney for the plaintiff herein. This
affidavit is made in support of plaintiff's motion to compel
defendant to answer certain interrogatories and to provide the
documents related thereto.

2. On April 19, 1976, plaintiff served upon the
defendant the demand for answers to interrogatories and the notice
to produce at issue herein.

3. Said request for information and documents related essentially to determining the amount, nature and legal fees of defendant. Such material was sought in order to provide this Court with all of the information which can be obtained relevant to the issue of the fee of plaintiff's counsel, which the parties have agreed will be paid by the defendant.

4. On May 24, 1976, plaintiff received defendant's answers to the interrogatories, the response to the request for the production of documents and the objections to interrogatories.

5. The defendant objected on two grounds. Firstly, that the information and documents are subject to attorney/client privilege. Secondly, that plaintiff's requests are not relevant to any issue in this action or reasonably calculated to lead to the discovery of admissible evidence.

6. As more particularly indicated in the memorandum of law submitted simultaneously herewith, the objections of defendant are without merit.

WHEREFORE, it is respectfully requested that the defendant be compelled to answer interrogatories 1, 2 and 4 and

to provide the relevant documents, as prayed for by this application.

Sworn to before me this

day of May, 1976.

SHELDON V. BURMAN

Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
SEYMOUR LANDAU and all others :
similarly situated, :

Plaintiff, :

72 Civ. 4514 KTD

-against- :

JUDGMENT

THE CHASE MANHATTAN BANK, N.A., :

Defendant. :

-----x
This action came on for hearing before the Court, on
~~April~~ ^{June} 2, 1976, Honorable Kevin T. Duffy, District Judge, pre-
siding, and the issues having been duly heard, and the Court
being fully advised, it is

(a) ORDERED, ADJUDGED and DECREED that the settlement
embodied in the stipulation of settlement dated April 19, 1976
is fair, reasonable and adequate and is hereby approved;

(b) ORDERED, ADJUDGED and DECREED that the settlement
be consummated in accordance with the terms of the stipulation of
settlement;

(c) ORDERED, ADJUDGED and DECREED that defendant is
permanently enjoined and restrained from computing interest
charges on check service charges and monthly maintenance charges
in connection with cash reserve special checking accounts or from
collecting any interest charges so computed;

(d) ORDERED, ADJUDGED and DECREED that this action and
all claims alleged in the complaint or embraced within the scope
of the complaint are dismissed on the merits and with prejudice

as to all class members who have not timely requested exclusion and in favor of Chase without costs to any party as against the other;

(e) ORDERED, ADJUDGED and DECREED that all class members who have not timely requested exclusion shall be barred from prosecuting any claim alleged in the complaint or embraced within the scope of the complaint;

(f) ORDERED, ADJUDGED and DECREED that this Court shall retain jurisdiction over the consummation of the settlement and the award to plaintiff and his counsel of a reasonable attorney's fee in such amount as the Court may direct.

Dated: New York, N.Y.
June 2, 1976

5/ Kim Thum *[Signature]*
Clerk of the Court
U.S. D.-J.

Judge T. B. *[Signature]* 6/3/76
Raymond E. *[Signature]*
Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
SEYMOUR LANDAU and all others : 72 Civ. 4514 (KTD)
similarly situated, :
 : AFFIDAVIT IN OPPOSITION
Plaintiff, : TO MOTION TO COMPEL
 :
-against- :
 :
THE CHASE MANHATTAN BANK, N.A., :
 :
Defendant :
----- x

NORMAN R. NELSON, being duly sworn, says:

1. I am an attorney associated with Milbank, Tweed, Hadley & McCloy, attorneys for defendant, and make this affidavit in opposition to plaintiff's motion to compel defendant to answer certain interrogatories and produce related documents pertaining to the amount of legal expenses incurred by it in the defense of this action and the manner in which such expenses were calculated.

2. This action was commenced by plaintiff on October 24, 1972. The complaint alleged that defendant's method of computing interest charges on loans and advances to customers with cash reserve special checking accounts violated state and federal banking laws. By order entered November 7, 1973, as later amended, the Court, among other things, granted plaintiff's motion for class action determination, granted plaintiff's motion for summary judgment on the issue of interest charges imposed on check service charges and maintenance charges, and granted defendant's motion for summary judgment on the issue of the compounding of interest charges. The action was subsequently referred to a magistrate with the direction that an inquest

be conducted to prove damages exactly with reference to the monthly statements of members of the class.


3. Because the expense of ascertaining and distributing individual damages to each member of the class would far exceed the total amount of actual damages established by the Court's order of November 7, 1973, as amended, the parties stipulated and agreed, subject to the approval of the Court, that defendant would credit 35% to each cash reserve special checking account customer and would pay the attorney for plaintiff and the class such amount as would be allowed by the Court. After notice was given to members of the class, a hearing was held on June 2, 1976 to determine whether the proposed settlement is fair, reasonable, adequate and proper. No objectants appeared or made submissions and the judgment approving the stipulation of settlement was signed by this Court on June 2, 1976. It is estimated that the recovery for the class will amount to approximately \$25,000. Counsel for plaintiff and the class has indicated his intention to apply for an allowance of attorney's fees in an amount not to exceed \$135,000. The only issue remaining for this Court to determine is the amount of a reasonable attorney's fee for plaintiff's counsel.

4. Although counsel for plaintiff and the class has not as yet made any showing of his time and disbursements, plaintiff nevertheless has addressed to defendant a demand for answers to interrogatories and notice to produce seeking to discover the amount of legal expenses incurred by it in the defense of this action and the manner in which such expenses were calculated. Plaintiff specifically demands that defendant provide information as to the total amounts of legal fees paid to counsel to date, annexing billing statements (Interrogatory No. 1), the

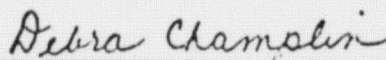
total amount of legal fees billed to defendant but not yet paid, annexing billing statements (Interrogatory No. 2), and the names of all attorneys and para-professionals employed in the defense of this action, the number of hours each has devoted and his hourly rate of compensation, the date each attorney was admitted to the bar, his publications and status as a partner or associate (Interrogatory No. 4).

5. Defendant has objected to these interrogatories and the related production requests on the grounds that the information and documents sought are not relevant to a determination of a proper attorney's fee for counsel to plaintiff and the class and that such matter is protected by the attorney-client privilege. Plaintiff now brings on this motion to compel answers to interrogatories and the production of documents. As more particularly set forth in defendant's memorandum of law submitted herewith, plaintiff's arguments in support of the motion are without merit and there is no justification or necessity for plaintiff to intrude into this area.

WHEREFORE, plaintiff's motion to compel should be denied in all respects.


Norman R. Nelson

Sworn to before me this
4th day of June, 1976


Debra Champlin

DEBRA CHAMPLIN
NOTARY PUBLIC, State of New York
No. 46-1521379
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 28, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

SEYMOUR LANDEAU, and all others :
similarly situated, :

Plaintiff, :

72 Civ. 4514 KTD

-against-

NOTICE OF APPLICATION FOR
LEGAL FEE

THE CHASE MANHATTAN BANK, N.A., :

Defendant. :

- - - - -x

S I R :

PLEASE TAKE NOTICE, that upon the annexed affidavit
of SHELDON V. BIRMAN, ESQ., sworn to before me June 30, 1976, the
affidavit of SANDERS CHAISE, Certified Public Accountant, sworn to
June 29, 1976, the settlement agreement, dated April 19, 1976, and
upon all the prior papers and proceedings had herein, the undersigned
will move this Court, before the Hon. Kevin Thomas Duffy, at the
Courthouse, located at 40 Centre Street, County, City and State of
New York, Room 906, on the 13th day of July, 1976, at 2:15 o'clock
in the afternoon of that day, or as soon thereafter as counsel can be
heard, for an order setting legal fees for counsel for plaintiff
in accordance with paragraph 2(b) of the settlement agreement, dated
April 19, 1976, in the requested amount of \$130,112.50, on the
grounds that such amount is reasonable and proper, and for such

other and further relief as this Court may deem just and proper.

Dated: New York, New York
June 30, 1976.

/s/
SHELDON V. BURMAN
Attorney for Plaintiff
Office and P.O. Address
21 East 40th Street
New York, New York 10016

TO:

MILBANK, TWEED, HADLEY & McCLOY
Attorneys for Defendant
Office and P.O. Address
1 Chase Manhattan Plaza
New York, New York 10005

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SEYMOUR LAMDAU and all others similarly
situated,

Plaintiff,

-against-

THE CHASE MANHATTAN BANK, N.A.,

Defendant.

72 Civ. 4514 KTD

AFFIDAVIT IN SUPPORT OF
PLAINTIFF'S LEGAL FEE
APPLICATION

SHELDON V. BURMAN, being duly sworn, deposes and
says:

1. I am the attorney for the plaintiff herein and
make this affidavit in support of the application by plaintiff for
legal fees for his counsel.

2. This proceeding is a class action which was
commenced nearly four years ago, without benefit of any prior
governmental litigation and without judicial precedent to enhance
the likelihood of success on the merits.

Nature of Prior Proceedings

3. The within action was brought on behalf of the
named plaintiff and all others similarly situated who had entered
into cash reserve credit agreements with the defendant bank. The
complaint asserted the illegality of two practices followed by the

bank in connection with the computation of finance charges on their check overdraft accounts.

4. Specifically, the practices challenged were with respect to the imposition of finance charges on check service charges of 10¢ per check and monthly maintenance charges of 75¢, rather than just on loan balances caused by overdrafts in one's checking account. The second practice challenged is known as compounding of finance charges, i.e., the imposition of "interest on interest."

5. The two challenged practices were alleged to have violated the National Bank Act, (12 U.S.C. Secs. 18 and 16) and the N.Y. Banking Law, Sec. 107(5), as well as certain common law equitable doctrines.

6. Discovery has revealed that the bank has offered the form of credit challengeable in this proceeding since 1967. (See: Answer to Int. No. 7) However, inasmuch as a two year statute of limitations was applicable, the defendant used the challenged methods from 1967 until October 1970, the date two years prior to the commencement of this action, with impunity.

7. The income derived by the bank from its imposition of interest on cash reserve checking accounts totalled \$2,076,529.00 for the year ended December 31, 1970 and \$2,722,570.00 for the year ended December 31, 1971. (See: Ans. to Interr. No. 8).

8. Subsequent to the commencement of the action a motion for class action certification was made by plaintiff. This motion was vigorously fought by defendant.

9. By order dated November 7, 1973, the plaintiff's motion for class action certification was granted. The class was deemed to consist of all persons who had cash reserve special checking accounts with the bank at any time from October 25, 1970 to September 23, 1973, and against whom interest charges were imposed upon special checking account service and maintenance charges.

10. As a result of said order, Chase was directed to give notice to each and every member of the class by first class mail, at its own cost and expense and without any costs whatsoever to plaintiff or the Class. Chase vigorously sought to defeat the prosecution of the action by asserting that such costs, which were estimated to be in excess of \$10,00000, be borne by the named plaintiff. It then made the necessary mailing at its own cost to 65,894 Chase customers who were members of the Class. If this ruling on the notice costs being chargeable to Chase were not obtained by the plaintiff, it was very likely that the litigation would have ended at that point.

11. With respect to the merits of the action, both parties made motions for summary judgment. The supporting papers and memoranda of law submitted with respect to such motions

were voluminous.

12. By decision dated September 28, 1973, the Court ruled in favor of plaintiff's motion for summary judgment to the extent of declaring that the practice of imposing interest charges on check service charges and monthly maintenance charges, as illegal. The Court also opined that injunctive and monetary relief would also be granted.

13. The extent of monetary relief was stated to be the actual amount of interest derived from the computation of finance charges in the illegal manner. A subsequent Order enjoined the bank from continuing to use this practice.

14. With respect to the bank's motion for summary judgment, this was denied, except to the extent of dismissing, for lack of standing, that portion of plaintiff's claim which was based upon the compounding practice. The rationale of the Court was that since the named plaintiff had not had such practice imposed against him, he could not represent others who had been victimized in such manner. Notwithstanding that the compounding claim had been dismissed, Chase ceased using the practice from in or about November 1973, when the Order was entered against it relative to plaintiff's motion for summary judgment.

14. Thus, although the compounding practice was dismissed, for all practical purposes the plaintiff class had

benefitted to the same extent as if the Court had expressly granted a summary judgment motion for the plaintiff Class, except with a prohibition as to monetary damages for past periods.

15. Subsequent to the Court's Order of November 7, 1973, and the Rule 23(c)(2) Notice of Pendency of the action given to the plaintiff Class, various applications were made by the parties relating to the measure of damages, the cost, method of computing and discovery of damages, to amend and modify the said November 7, 1973 Order, for leave to reargue various applications, as well as conferences and pre-trial hearings to dispose of, or narrow, the issues remaining for resolution.

16. The extended and protracted proceedings arising from the foregoing activities, culminated in an Order, dated December 4, 1975, referring this proceeding to a Magistrate for the purpose of conducting an inquest on the question of damages. The measure of damages was to be the amounts which would be exactly shown on the monthly statements of members of the Class.

17. Such a damage computation would entail the examination of more than 2,100,000 monthly checking account statements. It had been estimated that such a damage computation would exceed \$100,000.00.

18. On the other hand, actual damages seemed to range from the 12¢, for the named plaintiff, to an average of 10¢,

based upon a random sampling prepared by the bank. Rough calculations therefore, show that the approximate total damages to all Class members for the 35 month period, to wit, October 25, 1970 to September 28, 1973, would approximate \$9 000.00, arrived at by multiplying 60,000 accounts times 15¢.

19. Consequently, plaintiff was confronted with a factual situation which indicated that the actual damages to the class were substantially less than the cost of ascertaining and distributing such damages on an exact basis.

20. Concurrently with the hearings before the magistrate to whom this matter had been assigned, settlement negotiations were commenced by the parties. After numerous conferences and discussions, and a fusillade of documents, the parties, with the skillful guidance of this Court, arrived at a settlement which they deemed fair and reasonable.

21. The details of said settlement are set forth at length in the settlement documents and analyzed at some length in the plaintiff's memorandum of law submitted in support of the approval of the settlement as fair, reasonable, adequate and proper.

22. Extensive drafting and negotiations thereafter took place with respect to the execution of the settlement documents. Before execution of the settlement documents, there were at least 4 drafts thereof, with incidental meetings, negotiations and discussion.

23. On June 2, 1976, a hearing was held, after due notice to the Class members, as to the reasonableness of the settlement and as to plaintiff's proposed fee application, in the amount of \$135,000.00. No objectants appeared at the hearing.

24. A judgment was entered on June 3, 1976, approving the settlement, as fair, reasonable and adequate. By decretal paragraph (f) of said judgment, the Court retained jurisdiction over the consummation of the settlement and the award to plaintiff and his counsel of a reasonable attorney's fee.

25. On June 17, 1976, oral argument^{was} had with respect to the motion by plaintiff to compel answers to certain interrogatories relating to the legal fees payable by Chase to its counsel. The motion was denied. If appropriate, such information shall be sought, via subpoena, at a hearing to determine the reasonableness of the plaintiff's fee applicable. ^{was}Wiley.

Legal Services Rendered

26. The considerations relevant to determination of a legal fee for counsel for the Class are set forth at length in the Memorandum of Law accompanying this application. In short, the guidelines provided by the case of City of Detroit v. Grinnell, 495 F.2d 448, the Manual for Complex Litigation and The Code of Professional Responsibility of the American Bar Association, Sec. DR 2-106(B), are applicable.

27. The primary thrust in arriving at such determination is to first ascertain the number of hours spent in different aspects of litigation. Such time spent may then be multiplied "by the hourly amount to which attorneys of like skill in the area would typically be entitled for a given type of work on the basis of an hourly rate of compensation." (City of Detroit, supra, p. 471).

28. After one arrives at the legal fees based on a straight time basis, by consideration of the objective factors of time and hourly fee, then other more subjective factors may be considered, e.g., that "an element of public service is involved;" that the policy in class actions "is to provide a motive to private counsel to represent consumers and to enforce the laws." (Manual for Complex Litigation, Sec. 1.47) Other factors would include the following:

(i) Whether plaintiff's counsel had the benefit of a prior judgment or decree in an action brought by a governmental body.

(ii) The standing of counsel for the litigants at the Bar.

(iii) The novelty and complexity of the issues involved.

(iv) Whether pursuit of the action would "preclude

other employment by the lawyer." (DR-2-106(B)(3)).

(v) The benefits recovered or accruing to the Class.

(vi) The contingent nature of the fee which is subject to the "risk in litigation" factor.

29. The forgoing factors are relevant with respect to determining the multiple to be applied to the objective standard arrived at by multiplying the time spent and the hourly fee attributable to such time. As set forth in the supporting Memorandum of Law, multiples have been in the range of two to four times the objective standard used to determine the minimum fee for class action counsel.

30. In the within action, the defendant has agreed to pay the counsel fees of plaintiff "in such amount as shall be allowed by the Court" and without any deduction whatsoever from the benefits derived by the members of the class from this litigation, as is the usual case.

A. Time Spent

31. Annexed hereto and made a part hereof is a schedule of legal services rendered. This schedule sets forth in detail the various areas of litigation which plaintiff's counsel was

required to undertake in the successful conclusion of this litigation, the time spent on each such area and the applicable dates during which such time was spent. Such Schedule shows that a total of 482.25 hours was spent by plaintiff's counsel in this litigation.

32. A summary of the services rendered and the time spent thereon is set forth below:

<u>Nature of Services</u>	<u>Hours Spent</u>
(a) Pre-Complaint and Pleadings	49.5
(b) Discovery	29.75
(c) Class Action Motion	47.5
(d) Summary Judgment Motion	45.5
(e) Motions to Amend and for Reargument	51
(f) Court Appearances (not including motions)	62.25
(g) Settlement	50.5
(h) General	66
(i) Legal Fee Application	38.5
(j) Miscellaneous	<u>45.25</u>
Total Time Spent.	482.25

B. Hourly Fee

33. As set forth in Griannel, supra, the hourly

amount which is appropriate is an hourly fee which would be charged by "attorneys of like skill" (p. 471) on a non-contingent basis.

34. Counsel for plaintiff is a sole practitioner and rendered all of the services set forth herein. Indeed, the amount of hours spent is less than what would have been spent by other counsel who was not as experienced in the class action and usury areas as the undersigned.

35. As more particularly set forth below, counsel for plaintiff has a national reputation in the class action and consumer rights litigation field and has published numerous articles and lectured before various professional groups and institutions of higher learning, in both of these areas.

36. Inasmuch as plaintiff's counsel has not represented litigants in class actions on a non-contingent basis, he cannot state what his usual fee would be for such representation. In accordance with Grinnell, it would, therefore, be necessary to establish such hourly fee by determining what would "typically" be charged on a non-contingent basis. Plaintiff has sought this information as to the defendant's counsel in this action, which would be particularly relevant on this point.

37. Notwithstanding, it is believed, that the Court, from the cases cited in plaintiff's memorandum of law and from its own experience in prior class action proceedings, may take

50121 11 37

notice that senior attorneys representing defendants in class action litigation would receive at least \$150.00 per hour, "win, lose or draw."

38. Consequently, the hourly rate of \$150.00 is used as the multiplicand of the 482.25 hours spent in rendering legal services.

39. The resultant fee for such services is \$72,337.50.

C. Other Factors

39. The subjective factors set forth above shall now be considered. Under Grinnell, these factors merely relate to the multiple which should be applied to the reasonable non-contingent fee which has been established via application of an appropriate hourly fee to the time spent in rendering legal services.

40. With respect to the novelty of the questions involved in this litigation, it is clear that the action was commenced and prosecuted without any governmental banking agency in any way supporting the position of the plaintiff. Nor, was there prior litigation from other jurisdictions challenging the practice found illegal herein. Thus, the legal theory of wrongdoing pursued to a successful conclusion herein was a novel one developed by plaintiff.

counsel and subject to a substantial hazard, at its commencement, of not being successful.

41. With respect to the standing at the Bar, of counsel for both plaintiff and defendant, it is common knowledge that counsel for defendant is one of the largest law firms in this country, or in the world, with substantial expertise and resources to defend this action in the most formidable manner possible.

42. As to the qualification of counsel for plaintiff, it should be noted that such counsel has had extensive experience in the class action and consumer rights fields. Some of these prior litigations are as follows:

Eisen v. Carlisle and Jacquelyn,
94 S. Ct. 2140 (1974) (Amicus Curiae
Brief on behalf of N.Y.S. Trial
Lawyers Association);

Brown v. First National City Bank,
365 F. Supp. 1286 (S.D.N.Y. 1973),
r'v'd. in pt., 503 F.2d 114 (2nd Cir.
1974);

Zachary v. R.H. Macy & Co.,
31 N.Y. 2d 443 (1972), r'v'g. in pt.
39 A.D. 2d 116 (1st Dept. 1972), r'v'g.
in pt. 66 Misc. 2d 974 (Sup. N.Y. 1971);

Zachary v. Chase Manhattan Bank,
52 F.R.D. 532 (S.D.N.Y. 1972).

43. Counsel for plaintiff has been involved in many pro bono publico efforts in the consumer field, including:

(a) Federal Trade Commission Volunteer Lawyers Program.

(b) Community Law Offices, located in Harlem and East Harlem, New York.

(c) Joint Referral Program of the Association of the Bar and New York County Lawyers Association.

(d) Legal Consultant, New York Consumer Assembly.

44. Other professional affiliations of counsel for plaintiff have included:

(a) Chairman, Consumer Protection Section, New York State Trial Lawyers Association.

(b) Vice Chairman, Consumer Protection Section, American Trial Lawyers Association.

(c) Class Action Editor, Trial Lawyers Quarterly.

(d) Member, Committee on Insurance, Association of the Bar.

(e) Member, Committee on Legal Services, New York County Lawyers Association.

(f) Adjunct Associate Professor of Consumer Rights Law, City University of New York.

(g) Special counsel, New York State Governor's Temporary Commission on Living Costs and the Economy.

45. Publications and lectures of plaintiff's counsel include:

(a) Chairman and Lecturer, Class Action Program, New York Academy of Trial Lawyers, March-April, 1976;

(b) Panelist, Class Action Program, National Consumer Law Center, Kansas City, Missouri - February 1976;

(c) 4 Class Action Reports (May-June 1975)

(d) 23 Syracuse Law Review 653;

(e) Trial Lawyer's Quarterly, Winter 1975;

(f) New York Law Journal, March 27, 1975, p.1;

46. With respect to the benefits accruing to the class members as a result of this litigation, plaintiff has had a Certified Public Accountant review the financial circumstances herein. The affidavit of said accountant is annexed hereto, together with the appropriate schedules and exhibits. Such affidavit shows that the settlement herein benefitted the class members to the extent of \$425,604.50, the legal fee applied for being about 33% thereof.

47. This litigation was commenced as a public interest litigation on a contingent basis. In view of the lack of previous government activity, nor other litigation in this area,

the likelihood of success was dependent upon the proper development and imaginative processing by plaintiff's counsel of this litigation.

48. It should also be kept in mind that engaging in litigation of this type has resulted in a loss of other financial opportunities by counsel for plaintiff. Such restriction on plaintiff's counsel's practice substantially increased the hazard of litigation risk associated with this action.

49. The sum of \$132,112.50* has been requested as the fee for plaintiff's counsel. This sum represents a multiple of two applied to the total hourly basic time charges, to wit, \$59,775.00,** computed in accordance with the principles of Grinnell; plus the minimum basic hourly fee based on such services attributable to the legal fee application herein and miscellaneous items (Items No. 51, 52, Schedule of Legal Services Rendered), without any multiple applied thereto.***

Conclusion

50. Plaintiff's counsel has pursued this litigation to its successful conclusion for the Class, despite the vigorous defense provided by extremely able counsel for defendant without benefit of prior litigation or governmental activity, and with substantial hazards of litigation present.

* $\$119,550 + 12,562.50 = \$132,112.50$

** $398.5 \text{ hours } (482.25 - 83.75^{***}) \times \$150 = \$59,775.00 \times 2 = \$119,550.$

*** Legal services (38.5 hours) + Misc. services (45.25 hrs.) = 83.75 hr
 $83.75 \text{ hours} \times \$150 = \$12,562.50 \text{ basic time charge.}$

51. For all of the foregoing reasons, the request for plaintiff's counsel for fees in the amount of \$13²,112 . 50 should be awarded in its entirety.

sl

SHELDON V. BURMAN

Sworn to before me this

30 day of June, 1976.

sl

Notary Public

JOHN A. BURMAN
Notary Public, New York
State of New York
County of New York
Commission Expires 12/31/78

SCHEDULE

- OF -

LEGAL SERVICES RENDERED

Item No.	Date	Nature of Services	Time Spent (Hours)
1	Aug.-Sept. 1972	Meetings with client, review of monthly checking account statements review of applicable law, investigations of legislative history; etc.	40
2	Oct. 3-6	Preparation and drafting of complaint, in various drafts, together with incidental considerations in commencing action.	8
3	Nov. 8 Dec. 15	Review of documents; review and analysis of defendant's answer.	1.5
4	Nov.-Jan. 22, 1973	Preparation of demand for answers to interrogatories, notice to produce, review and analysis of defendant's answers to interrogatories, response to notice to produce and objections to demand for interrogatories.	11
5	Jan. 15 1973-Nov. 1973.	Motion for summary judgment by defendant opposed by plaintiff; preparation of Rule 9(a) Statement; preparation of memorandum of law and review of defendant's memorandum of law; plaintiff's affidavit in opposition to summary judgment motion and in support of cross motion for summary judgment; defendant's reply memorandum of law; plaintiff's supplemental affidavit; defendant's supplemental affidavit; review of opinion dated September 28, 1973; review of proposed Order on said opinion and submission of proposed counterorder; etc.	45.5
6	Nov. 1972 Dec. 1973	Preparation of class action motion; research of applicable law and analysis of factual circumstances; preparation of supporting affidavits, and a memorandum of law; review of defendant's memorandum of law and preparation of a reply memorandum of law; preparation of	

tem No.	Date	Nature of Services	Time Spent (Hours)
		orders and counterorders; review of proposed orders; preparation of analysis for court of the proposed order, counter-order, and notices of pendency; etc.	47.5
	Oct. 1973	Research and preparation of motion for reargument.	5.5
	Nov. 27, 1973-June 29, 1974	Plaintiff's motion to amend the November 7, 1973 order pursuant to Rule 60(b) and 54(c) FRCP; preparation of supporting affidavit and memorandum of law; review of defendant's memorandum of law, preparation of reply affidavit and memorandum of law; supplemental material submitted to court; analysis of June 14, 1974 order and opinion, preparation of motion for reargument with respect thereto; etc.	49.5
9	July, 1974	Attendance at pretrial conference of July 9, 1974; preparation and review of file for said conference; preparation of memorandum of law; review of defendant's memorandum of law and submission of reply memorandum of law.	20.5
10	Sept.-Oct. 1974	Review of file and preparation for pretrial conference of September 20, 1974; attendance at pre-trial conference; analysis of defendant's memorandum of law relating to damage, discovery and cost questions; preparation and research for responsive memorandum of law	7.5
11	Sept.-Oct. 1975	Review of file and preparation for pretrial conference of September 30, 1975; attendance at pre-trial conference; analysis of defendant's memorandum of law relating to damage, discovery and cost questions; preparation and research for responsive memorandum of law; sur-reply memorandum of law of plaintiff	8.5

Item No.	Date	Nature of Services	Time Spent (Hours)
12	Nov. 12- Nov. 13, 1973	Review of file re settlement discussions with defendant; review of other settlements in similar cases; meeting at my office with Chase's counsel	5
13	Jan. 26-Jan. 27, 1976	Review of file and appropriate research and preparation for pre-trial conference before Magistrate Sol Schreiber, scheduled for January 28, 1976; attendance at pre-trial conference	7
14	Jan 30, 1976	Review statistical aspects of damage computations with actuary	1.5
15	Feb. 4, 1976	Various statistical calculations as to damages and a review of the relevant documents of defendant relating thereto.	3
16		Preparation for settlement conference scheduled for February 5, 1976; attendance at said settlement conference.	3
17	Feb. 6, 1976	Conference with Magistrate Schreiber and preparation therefor.	1.5
18	Feb. 9, 1976	Review of settlement possibilities and applicable research.	2.5
19	Feb. 10, 1976	Preparation for and attendance at settlement conference before Magistrate Schreiber.	3
20	Feb. 17-18 1976	Review of damage calculations; preparation for and attendance at pre-trial conference on February 18, before Magistrate Schreiber	4.5
21	March 9-15 1976	Review, analysis, revision and negotiation of settlement documents.	11
22	March 15, 22, 1976	Review of files to ascertain time element to apprise the court of legal fee application	8
23	March 16	Review of 36 page Order in <u>Serrano v. Priest</u> , Calif. Sup. Ct.	1.5

Item No.	Date	Nature of Services	Time Spent (Hours)
24	March 24	Review and revision, together with negotiation of third draft of settlement documents.	3
25	March 25	Review of record on appeal, <u>Grinnel v. City of Detroit</u> , (2d Cir. 1974)	1.5
26	March 26, 1976	Calculation of benefits to class members from injunctive relief and by voluntary discontinuance of the compounding practice	1.5
27	March 29, 1976	Review of file to ascertain amount of time spent on rendering of legal services	2.5
28	March 30, 31, 1976	Review, analysis, revision and negotiation of fourth draft of settlement agreement	2
29	March 31, 1976	Research of applicable law re legal fee application.	2.5
30	April 5, 1976	Review of calculations of benefits to class with accountant.	3
31	April 6, 18, 1976	Preparation of demand for interrogatories to defendant relating to legal fees and financial studies.	1.25
32	April 7, 1976	Research re approval of settlement agreement	2.5
33	April 13, 19, 1976	Finalize joint application of settlement agreement approval and execution thereof.	1
34	April 18, 21, 1976	Research on approval of settlement agreement	3
35	April 23, 1976	Calculation of benefits to class	2
36	April 28, 1976	Calculation of benefits to class	1.5
37	May 5-May 18	Research and preparation of memorandum of law for approval of settlement agreement	12.5
38	May 24	Review of file and research relating to Memorandum of Law for motion to compel answers to interrogatories	5

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No.	Date	Nature of Services	Time Spent (Hours)
39	May 26, 1976	Final preparation of motion papers to compel answers to interrogatories.	2
40	May 27-28	Calculation of benefits to class	.5
41	June 1, 1976	Preparation for settlement hearing.	1.75
42	June 2	Attendance at settlement hearing.	1.5
43	June 4	Review of defendant's opposition memorandum of law and affidavit relating to plaintiff's motion to compel answers to interrogatories.	1.5
44	June 17	Preparation and attendance at hearing on motion to compel answers to interrogatories	3
45	June 19	Review of files for ascertaining time of legal services rendered for fee application	3
46	June 21	Preparation of schedule of legal services rendered on behalf of plaintiff	5
47	June 22	Preparation of schedule of services and petition for legal fee application	3.5
48	June 23	Preparation of memorandum of law in support of fee application	6.75
49	June 24	Completion of fee application papers	4.25
50	General	Approximately 400 oral and written communications between the litigants, and with class members referred to counsel for plaintiff by the Clerk of the Court, at an average time expended at 10 minutes per communication.	66
51	Misc.	Unaccounted for services rendered not included in any of the above item numbers, estimated at 8% of the foregoing items	35.25
52	Misc.	Estimated time spent to review opposition papers to fee application, appear at the hearing set for such application, and for such application and conclusion of this litigation.	10
Total Time Rendered for Legal Services			492.25
			108

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
SEYMOUR LANEAU and all others :
similarly situated, :

Plaintiff, :

72 Civ. 4514 KTD

-against-

: ACCOUNTANT'S AFFIDAVIT

THE CHASE MANHATTAN BANK, N.A., :

Defendant. :

-----x
STATE OF NEW YORK:COUNTY OF NEW YORK SS.:

SANDERS CHASE, being duly sworn, deposes and says:

1. I am a Certified Public Accountant and make this affidavit in connection with my review and analysis of the benefits obtained, or to be reasonably expected in the future, by CHASE MANHATTAN BANK Special Checking Account customers, with cash reserve privileges, arising from the within litigation.

2. Based on such review and analysis and upon the assumptions hereinafter described, the total benefits to the Class members is the sum of \$425,604.50. This amount is arrived at as follows:

a. Cash benefits \$25,200.00*

* 72,000 "Authorized Recipients" estimated in Stipulation of Settlement, dated April 19, 1976, x 35¢ = \$25,200.00

b. Pre-judgment benefits	46,970.00	**
c. Post-judgment benefits	209,822.00	***
d. Legal fee payable by defendant	132,012.50	
Estimated notice costs	<u>11,500.00</u>	
Total benefits.	\$429,604.50	

3. The legal fee requested by plaintiff in the amount of \$132,012.50 represents approximately 31% of the total benefits to the class.

S/

SANDERS CHAISE

Sworn to before me this
day of June, 1976.

S/

Notary Public

SHELDON V. BURMAN
Notary Public, State of New York
No. 31-5517585
Qualified in New York County
Commission Expires March 30, 1979

** See Schedule A and Exhibit 1 annexed hereto.

*** Future benefits have been computed in accordance with what I understand is the traditional method in actions of this type. The actual total benefit is \$343,972.00, as indicated on Schedule B annexed hereto. A factor of .61 has been applied to such total benefit amount to obtain the present value thereof, which is stated above.

PRE-JUDGMENT BENEFITS
(Notes 1 and 2)

<u>Time Period</u>	<u>Illegal Interest on Per Check Charges</u>	<u>Illegal Interest on Monthly Maintenance Charges</u>	<u>Cessation of Compounding of Interest</u>	<u>Annual Benefits</u>	<u>5% Interest on Annual Benefit</u>	<u>Total Annual Benefits to Class</u>
10/73 to 9/74	\$5,767	\$3,551	\$1,620	\$10,938	\$547.	\$11,485
10/74 to 9/75	9,342 (Note 3)	3,835	2,363 (Note 3)	15,540	1,324	16,864
10/75 to 6/76	9,902	4,065	2,505	16,473	2,148	18,621
	<u>\$25,012</u>	<u>\$11,451</u>	<u>\$6,488</u>	<u>\$42,951</u>	<u>4,019</u>	<u>46,970.</u>

- Notes (1) Exhibit 1 is a copy of calculations made by Chase as to an average class member's account. Such calculations reveal average total monthly charges of \$1.25, consisting of a checking service charge of \$1.20 per month and a charge for monthly maintenance of 75¢. Accordingly, it has been assumed that 62% of the illegal charges ($1.20 \div 1.95$) are attributable to illegal interest on per check service charges and 38% ($75 \div 1.95$) are attributable to monthly maintenance charges. Consequently, of the settlement amount of \$25,200.00, \$15,600.00 is assumed to be attributable to per check service charges and \$9,600.00 to maintenance charges. These amounts are for a 35 month period and they are annualized at \$5,340.00 and \$3,288.00 respectively, and are the opening figures used, as adjusted by the growth factor. The compounding figure is likewise obtained from Exhibit 1 and annualized for the purposes of the computations herein.
- (2) A growth factor of 8% per year is assumed. Such factor is conservative as the answers to Interr. No. 8 show 63,241 customers on December 31, 1970 and 74,162 customers on December 31, 1971 with gross income attributable to each year of approximately \$2.1 million to \$2.7 million, which would represent a 15% increase in customers and a 28% increase in gross income for such one year period. Similarly, a comparison of the 10 month period ending October, 1972, with the 1971 customer and income figures, shows an 11.5% increase in customers and a 15% increase in gross income.
- (3) The per check charge was increased from 10¢ to 15¢ per check. Accordingly, the illegal interest on check service charges was increased by 50% and the compounding factor was increased 35% ($50\% \times 1.20 \div 2.55$).
- (4) Interest computed on cumulative annual total.

Schedule "A"

POST JUDGMENT BENEFITS

Time Period	Illegal Interest On Per Check Charges	Illegal Interest On Monthly Main- tenance Charges	Cumulation of Com- pounding of Interest	Annual Benefits	Cumulative Benefits *	5% Interest of Annual Benefit	Total Annual Benefits
Brought Forward (Schedule A)	\$9,903	\$4,065	\$2,505		\$46,970		
7/76 ** - 6/77	\$10,695	\$4,390	\$2,705	\$17,790	\$64,760	\$3,238	\$21,028
7/77 - 6/78	11,551	4,741	2,921	19,213	83,973	4,199	23,412
7/78 - 6/79	12,475	5,120	3,155	20,750	104,723	5,236	25,986
7/79 - 6/80	13,473	5,530	3,407	22,410	127,133	6,357	28,767
7/80 - 6/81	14,551	5,972	3,680	24,203	151,336	7,567	31,770
7/81 - 6/82	15,715	6,450	3,974	26,139	177,475	8,879	35,018
7/82 - 6/83	16,972	6,966	4,292	28,230	205,705	10,285	38,515
7/83 - 6/84	18,330	7,523	4,635	30,438	236,193	11,810	42,298
7/84 - 6/85	19,796	8,125	5,006	32,927	269,120	13,456	46,383
7/85 - 6/86	21,380	8,775	5,406	35,561	304,681	15,234	50,795
TOTAL BENEFITS 10-YEAR PERIOD 7/76 - 6/86	\$154,938	\$63,592	\$39,181	\$257,711	\$1,725,099	\$86,261	\$343,972

* Interest Computed On Cumulative Benefits
8% Growth Factor Assumed, As Described In Schedule A

SCHEDULE "B"

1. INTEREST IN 10¢ CHECK SERVICE CHARGES TO SPECIAL CHECKING ACCOUNTS

WITH CASH RESERVE: 11/70 THROUGH 9/73

(a) INPUT:

(i) 27,122 - Av # Sp. C. Acct's w/CR IN USE
PER MONTH 11/70 THROUGH 9/73

(ii) 12 - Av # CHECKS DRAWN ON Sp. C.
ACCT'S PER MONTH

(iii) ASSUME NO DEPOSIT IN ACCOUNT UNTIL
30TH DAY OF CYCLE AFTER DATE
ON WHICH SERVICE CHARGE DEBITED
TO ACCOUNT.

9.2-5 CALCULATIONS:

12 CHECKS/MO = \$ 1.20 /CHECK CHARGES

Av # Sp. C. Acct's w/

X 27,122 CR IN USE

\$ 32,546.40

INTEREST RATE/
MONTH

.01

\$ 325.46

INTEREST ON
SERVICE CHARGE/
MONTH.

X 35 MONTHS

\$ 11,391.10

TOTAL INT.
ON SERVICE
CHARGE.

INTEREST ON 75¢ / MO. MAINTENANCE CHARGE OF SPECIAL
CHECKING ACCOUNTS W/ CASH RESERVE : 11/70 THROUGH 9/73

(a) INPUT:

(i) same as 1(a)(i) above

(ii) same as 1(a)(iii) above

(2) CALCULATIONS:

\$ 0.75	MONTHLY MAINTENANCE CHG
	AV. # SPC ACCTS IN
X 27,122	CR IN USE
\$ 20,341.50	
.01	INTEREST RATE / MONTH
\$ 203.42	INTEREST BY MAINTENANCE CHARGE / MONTH
X 35	MONTHS
\$ 7119.70	TOTAL INT ON MAINTENANCE CHARGE

3. INTEREST ON INTEREST

TOTAL DELINQUENT ACCOUNTS 11/70 - 9/73 60,715

TOTAL CR INT INCOME 11/70 - 9/73 \$ 9,705,598

TOTAL SP & REG ACCTS W/ CR IN USE

11/70 - 9/73 1,344,112

AV INT / ACCT / MONTH \$ 7.22

$$60,715 \times 7.22 \times .01 = 4,383.62$$

or

\$.0721 ACC'T.

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SEYMOUR LANDAU and all others
similarly situated,

Plaintiff

-against-

THE CHASE MANHATTAN BANK, N.A.,

Defendant
NOTICE OF MOTION
and
SUPPORTING PAPERS

SHELDON W. BURMAN

Attorney for Plaintiff

Office and Home Office Address: The Plaza

41 EAST 40TH STREET

BOROUGH OF MANHATTAN NEW YORK, N.Y. 10018

TEL. (212) 685-4745

To

Attorney(s) for

Defendant(s) of the within

Case

Attorney(s) for

N. V. BURMAN

Home Office Address

40TH STREET

MANHATTAN, NEW YORK, N.Y. 10018

OF SETTLEMENT

that an order

and a copy will be presented

the within named Court, at

19

V. BURMAN

Home Office Address

40TH STREET

MANHATTAN, NEW YORK, N.Y. 10018

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SEYMOUR LANDAU and all others :
similarly situated, :
 :
Plaintiff, :
 :
-against- :
 :
THE CHASE MANHATTAN BANK, N.A., :
 :
Defendant. :
 :
-----X

AFFIDAVIT

72 Civ. 4514 KTD

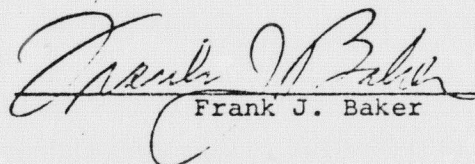
STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

FRANK J. BAKER, being duly sworn, deposes and says:

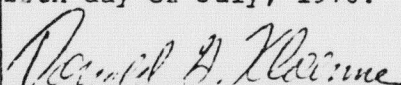
1. I am a Second Vice President of defendant The Chase Manhattan Bank, N.A. ("Chase") and make this affidavit in compliance with paragraph 4 of the stipulation of settlement dated April 19, 1976 requiring Chase to file with this Court a certificate of compliance setting forth the number of accounts credited pursuant to the stipulation of settlement and annexing the form of notice distributed to customers.

2. On July 9, 1976, Chase credited thirty-five cents (35¢) to the accounts of persons who had cash reserve special checking accounts with Chase. The total number of accounts so credited was 71,385.

3. Annexed hereto as Exhibit A is a copy of the form of notice distributed to Chase customers.


Frank J. Baker

Sworn to before me this
28th day of July, 1976.



DONALD G. KLOENNE
NOTARY PUBLIC, State of New York
No. 30 2150020
Qualified in Nassau County
Certificate filed in New York County
Commission Expires March 30, 1977

The Chase Manhattan Bank, N.A.
1 Chase Manhattan Plaza
New York, New York 10017

July, 1976

CHASE

NOTICE TO CASH RESERVE
SPECIAL CHECKING ACCOUNT CUSTOMERS

- As a result of a court-approved settlement of a class action in which Chase is the defendant, Chase has credited 35¢ to the monthly statement accompanying this notice. This 35¢ credit has been given to all of Chase's customers who have special checking accounts with a Cash Reserve line of credit. No credit has been made to regular checking accounts or accounts which do not have a Cash Reserve line of credit.

The settlement was made in a lawsuit entitled Seymour Landau v. The Chase Manhattan Bank, N.A., 72 Civ. 4514 KTD (S.D. N.Y.), after the Honorable Kevin T. Duffy, Judge of the United States District Court for the Southern District of New York, ruled that Chase could not properly compute or collect interest on cash reserve advances to its special checking account customers for the payment of check service charges or the monthly maintenance charge imposed on such customers.

After receiving this ruling, Chase discontinued the practice which Judge Duffy found to be improper and mailed a notice dated December 17, 1973 to approximately 65,900 persons who were included in the Class defined by Judge Duffy.

This settlement has been reached and approved by the Court after careful evaluation by both parties led to the decision that further expenses and burdens imposed by this lawsuit would outweigh any monetary recoveries by the members of the Class.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
SEYMOUR LANDAU and all others
similarly situated, :

Plaintiff, :

-against- :

THE CHASE MANHATTAN BANK, N.A., :

Defendant. :

ORDER

72 Civ. 4514

-----X
KEVIN THOMAS DUFFY, D.J.

The application by the plaintiff's counsel for attorneys' fees is hereby granted in the amount of \$12,500. Both sides have referred me to recent cases in this district and in other circuits concerning the amount of counsel fees. It is somewhat astonishing to me that neither side referred to the benefit (35 cents per person) endowed on the members of the class. I believe that this is a proper consideration in setting attorneys' fees. In light of all the circumstances, including time expended by the attorneys, the amount awarded is generous.

IT IS SO ORDERED.


U. S. D. J.

Dated: New York, New York
November 23, 1976

MICROFILM

NOV 05 1976

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

SEYMOUR LANDAU and all others
similarly situated,

Plaintiff,

:

:

: 72 Civ. 4514 KTD

-against-

THE CHASE MANHATTAN BANK, N.A.,

: NOTICE OF APPEAL

:

Defendant.

----- x

PLEASE TAKE NOTICE, that the above-named plaintiff
hereby appeals to the United States Court of Appeals for the
Second Circuit from the following Orders:

1. Memo endorsed with respect to motion filed
June 1, 1976 to compel defendant to answer interrogatories relating
to the legal fees of defendant, which endorsement was entered in
or about June 18, 1976.

2. Order with respect to plaintiff's application
for counsel fees, which Order was entered in or about November 5,
1976.

Dated: New York, New York
November 29, 1976.

Yours, etc.

sf

TO; Milbank, Tweed,
Hadley & McCloy
One Chase Man-
hattan Plaza
N. Y., N. Y.

SHELLON V. BURMAN, ESQ
Attorney for Plaintiff
21 East 40th Street
New York, New York 10016
(212) 685 7188

sulted in a considerable exposure to IAI that the unified facade of plaintiffs' position began to crack. The crew members who received very high awards refused to give up 65% to their former ally who then proceeded to reveal at least some details of the arrangement successfully concealed for four years.

Sufficient was revealed to allow the District Court to see through the scheme and to act in the only way possible to protect the Court from dishonor.

This, then, caused a further temporary division in the IAI camp and what was revealed confirmed that the District Court had been correct and that its actions were fully justified to protect the judicial system and as a sanction against those who would use that system with disdain for its traditions.

XIII. Conclusion

The decision of the District Court should be affirmed.

Respectfully submitted,

MENDES & MOUNT

Attorneys for Defendants-Appellees

ERNEST D. KENNEDY

DENNIS C. MURPHY

JAMES P. DONOVAN

Of Counsel

(61307)

RECEIVED

APR -1 1977

CONDON & FORSYTH

By Marshall F. Jones

RECEIVED

FUCHSBERG & FUCHSBERG

BY *Norman L. Cousen*

DATE *4/1/77* TIME *4:50 P.M.*

COPY RECEIVED

ALE RUSSELL GRAY SEAMAN & BIRKETT

ATTORNEYS FOR _____

DATE *4/1/77*

P. Michael Anderson